



Minamata Convention on Mercury (Consequential Amendments) Regulations 2021

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 16 September 2021

David Hurley
Governor-General

By His Excellency's Command

Trevor Evans
Assistant Minister for Waste Reduction and Environmental Management
Parliamentary Secretary to the Minister for the Environment

Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Schedules.....	1
Schedule 1—Amendments		2
	<i>Agricultural and Veterinary Chemicals (Administration) Regulations 1995</i>	2
	<i>Customs (Prohibited Exports) Regulations 1958</i>	9
	<i>Customs (Prohibited Imports) Regulations 1956</i>	11
	<i>Therapeutic Goods Regulations 1990</i>	12

1 Name

This instrument is the *Minamata Convention on Mercury (Consequential Amendments) Regulations 2021*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) the day after this instrument is registered; and (b) the day the Minamata Convention on Mercury, done at Minamata on 10 October 2013, comes into force for Australia. However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. The Minister must announce, by notifiable instrument, the day the Convention comes into force for Australia.	7 March 2022 (F2022N00032) (paragraph (b) applies)

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following:

- (a) the *Agricultural and Veterinary Chemicals (Administration) Act 1992*;
- (b) the *Customs Act 1901*;
- (c) the *Therapeutic Goods Act 1989*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Agricultural and Veterinary Chemicals (Administration) Regulations 1995

1 Subregulation 1.3(1)

Insert:

mercury means elemental mercury (Hg(0), CAS Number 7439-97-6), and includes mixtures of mercury (including alloys of mercury) with a mercury concentration of at least 95% by weight, but does not include non-Minamata mercury.

mercury-added products means the products listed in Part 1 of Annex A to the Minamata Convention that contain mercury, but does not include the following:

- (a) products essential for civil protection and military uses;
- (b) products for research, calibration of instrumentation, or for use as a reference standard;
- (c) if no feasible mercury-free alternative for a replacement is available—the following:
 - (i) switches and relays;
 - (ii) cold cathode fluorescent lamps and external electrode fluorescent lamps for electronic displays;
 - (iii) measuring devices;
- (d) products used in traditional or religious practices;
- (e) vaccines containing thiomersal as preservatives.

Minamata Convention means the Minamata Convention on Mercury done at Minamata on 10 October 2013, as in force for Australia at the commencement of this definition.

Note: The Convention could in 2021 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

non-Minamata mercury means any of the following:

- (a) research mercury;
- (b) naturally occurring trace quantities of mercury present in:
 - (i) products such as non-mercury metals, ores or mineral products (including coal); or
 - (ii) products derived from the products mentioned in subparagraph (i);
- (c) unintentional trace quantities of mercury in chemical products.

research mercury means mercury to be used for laboratory-scale research or as a reference standard.

2 Subregulation 1.3A(1) (at the end of the definition of **controlled chemical**)

Add:

- (d) mercury that is to be used as an active constituent in a proposed or existing chemical product; or
- (e) a chemical product that is mercury; or

(f) a chemical product that is a mercury-added product.

3 Before paragraph 3.05(a)

Insert:

(aa) the Minamata Convention;

4 Before subregulation 3.45(1)

Insert:

Importation of controlled chemicals other than mercury-added products

5 After subregulation 3.45(1)

Insert:

Importation of controlled chemicals that are mercury-added products

(1A) The importation into Australia of a controlled chemical that is a mercury-added product is prohibited in all cases.

Prescribed condition

6 Subregulation 3.45(2)

After “subregulation (1)”, insert “or (1A)”.

7 Before subregulation 3.50(1)

Insert:

Controlled chemicals other than mercury

8 After subregulation 3.50(1)

Insert:

Controlled chemical that is mercury

(1A) Subject to subregulation (1B), this Subdivision also applies to a controlled chemical that is mercury.

(1B) This Subdivision does not apply to mercury that is imported from a Party to the Minamata Convention.

Import-prohibited chemicals

9 Paragraph 3.55(1)(c)

Repeal the paragraph, substitute:

(c) for a chemical listed in Schedule 1—any condition or restriction specified for the chemical in the relevant item in Schedule 1 is satisfied.

10 Paragraph 3.55(2)(c)

Repeal the paragraph, substitute:

(c) for a chemical other than mercury—any condition or restriction specified for the chemical in the relevant item in Schedule 1.

11 Before subregulation 3.65(1)

Insert:

Permission to import an import-prohibited chemical other than mercury

12 Subregulation 3.65(1)

After “import-prohibited chemical”, insert “specified in an item in Schedule 1”.

13 After subregulation 3.65(1)

Insert:

Permission to import an import-prohibited chemical that is mercury

(1A) An authorised officer may grant an application for permission to import an import-prohibited chemical that is mercury from a non-party (the **exporting party**) to the Minamata Convention only if the officer is satisfied that:

(a) either:

(i) Australia has provided the exporting party with written consent to the import; or

(ii) a general notification of consent is in force for Australia in accordance with paragraph 7 of Article 3 of the Minamata Convention; and

(b) the exporting party has provided written certification that the mercury is neither sourced from primary mercury mining nor excess mercury from the decommissioning of chlor-alkali facilities.

Refusal to grant application

14 Subregulation 3.65(2)

After “subregulation (1)”, insert “or (1A)”.

15 Before subregulation 3.100(1)

Insert:

Manufacture of controlled chemicals other than mercury-added products

16 After subregulation 3.100(1)

Insert:

Manufacture of controlled chemicals that are mercury-added products

(1A) The manufacture in Australia of a controlled chemical that is a mercury-added product is prohibited in all cases.

Prescribed condition

17 Subregulation 3.100(2)

After “subregulation (1)”, insert “or (1A)”.

18 Before subregulation 3.200(1)

Insert:

Export of controlled chemicals other than mercury-added products

19 After subregulation 3.200(1)

Insert:

Export of controlled chemicals that are mercury-added products

- (1A) The export from Australia of a controlled chemical that is a mercury-added product is prohibited in all cases.

Prescribed condition

20 Subregulation 3.200(2)

After “subregulation (1)”, insert “or (1A)”.

21 Before subregulation 3.205(1)

Insert:

Controlled chemicals other than mercury

22 After subregulation 3.205(1)

Insert:

Mercury and research mercury

- (1A) This Subdivision also applies to:
- (a) a controlled chemical that is mercury; and
 - (b) a chemical product that is research mercury.

23 Subregulation 3.205(2)

Repeal the subregulation, substitute:

Export-prohibited chemicals

- (2) In this Subdivision:
- (a) a controlled chemical to which this Subdivision applies is called an ***export-prohibited chemical***; and
 - (b) research mercury is also called an ***export-prohibited chemical***.

24 Paragraph 3.210(1)(c)

Repeal the paragraph, substitute:

- (c) for a chemical that is listed in Schedule 1—any condition or restriction specified for the chemical in the relevant item in Schedule 1 is satisfied.

25 Paragraph 3.210(2)(c)

Repeal the paragraph, substitute:

- (c) for a chemical other than mercury—any condition or restriction specified for the chemical in the relevant item in Schedule 1.

26 Regulation 3.225

Before “An”, insert “(1)”.

27 At the end of regulation 3.225

Add:

- (2) An authorised officer must grant an application for permission to export research mercury if the export is to a non-party to the Rotterdam Convention.

28 Before subregulation 3.230(1)

Insert:

Export-prohibited chemicals specified in Schedule 1—Stockholm Convention

29 Before subregulation 3.230(2)

Insert:

Export-prohibited chemicals specified in Schedule 1—Rotterdam Convention

30 After subregulation 3.230(2)

Insert:

Export of export-prohibited chemical that is mercury to a Party to the Minamata Convention

- (2A) An authorised officer may grant an application for permission to export an export-prohibited chemical that is mercury to a Party (the **importing Party**) to the Minamata Convention if the authorised officer is satisfied that:
- (a) the importing Party has provided its written consent to the export; and
 - (b) the mercury is to be exported:
 - (i) for a use allowed to the importing Party under the Minamata Convention; or
 - (ii) for environmentally sound interim storage as set out in Article 10 of the Minamata Convention.

Export of export-prohibited chemical that is mercury to a non-party to the Minamata Convention

- (2B) An authorised officer may grant an application for permission to export an export-prohibited chemical that is mercury to a non-party (the **importing party**) to the Minamata Convention if the authorised officer is satisfied that the importing party has provided:
- (a) its written consent to the export; and
 - (b) its written certification demonstrating that:
 - (i) it has measures in place to ensure the protection of human health and the environment; and
 - (ii) it has measures in place to ensure compliance with Articles 10 and 11 of the Minamata Convention; and
 - (iii) the mercury will be used only for a use allowed under the Minamata Convention to a Party to the Minamata Convention or for environmentally sound interim storage as set out in Article 10 of the Minamata Convention.

Export of export-prohibited chemical that is research mercury

- (2C) An authorised officer may grant an application for permission to export an export-prohibited chemical that is research mercury if:
- (a) the export is to a Party to the Rotterdam Convention; and
 - (b) the authorised officer is satisfied that the export complies with the requirements of that Convention.

31 Before subregulation 3.230(3)

Insert:

Export of other export-prohibited chemicals

32 Paragraph 3.230(3)(a)

Repeal the paragraph, substitute:

- (a) none of subregulations (1) to (2C) apply; and

33 Before subregulation 3.230(4)

Insert:

Refusal to grant application

34 Paragraph 3.235(1)(a)

Repeal the paragraph, substitute:

- (a) either:
 - (i) the relevant item in Schedule 1 identifies the relevant international agreement or arrangement as the Rotterdam Convention; or
 - (ii) the chemical is research mercury; and

35 Subregulation 3.240(1)

Repeal the subregulation, substitute:

- (1) This regulation applies to the export of an export-prohibited chemical if:
 - (a) the relevant item in Schedule 1 identifies the relevant international agreement or arrangement as the Rotterdam Convention; or
 - (b) the chemical is research mercury.

36 Paragraph 3.245(1)(a)

Repeal the paragraph, substitute:

- (a) either:
 - (i) the relevant item in Schedule 1 identifies the relevant international agreement or arrangement as the Rotterdam Convention; or
 - (ii) the chemical is research mercury; and

37 Subregulation 3.250(1)

Repeal the subregulation, substitute:

- (1) An authorised officer must refuse to grant an application mentioned in any of subregulations 3.230(1) to (3) for permission to export an export-prohibited chemical if the officer is not satisfied as to the matters mentioned in the relevant subregulation in relation to the application.

38 Paragraph 3.250(2)(a)

Repeal the paragraph, substitute:

(a) either:

- (i) the relevant item in Schedule 1 identifies the relevant international agreement or arrangement as the Rotterdam Convention; or
- (ii) the chemical is research mercury; and

39 Regulation 3.305 (definition of *import-prohibited chemical*)

After “controlled chemical”, insert “(other than mercury)”.

40 Regulation 3.305 (definition of *export-prohibited chemical*)

Repeal the definition, substitute:

export-prohibited chemical means a controlled chemical (other than mercury), and includes research mercury.

41 After Part 4

Insert:

Part 5—Application, saving and transitional provisions

Division 1—Amendments made by the Minamata Convention on Mercury (Consequential Amendments) Regulations 2021

5.05 Amendments made by the *Minamata Convention on Mercury (Consequential Amendments) Regulations 2021*

Application of amendments

- (1) The amendments of these Regulations made by the *Minamata Convention on Mercury (Consequential Amendments) Regulations 2021* apply in relation to the following:
 - (a) the importation into, export from, or manufacture in, Australia of mercury or mercury-added products on or after the commencement of that instrument (whether any application for permission to do so was made before, on or after that commencement);
 - (b) the export of research mercury from Australia on or after the commencement of that instrument (whether the application for permission to export was made before, on or after that commencement).

Pending applications for permissions to export mercury

- (2) If:
 - (a) an application was made before the commencement of the *Minamata Convention on Mercury (Consequential Amendments) Regulations 2021* under regulation 3.215 of these Regulations for a permission to export mercury (within the meaning of these Regulations as amended by that instrument); and
 - (b) as at immediately before the commencement of that instrument, no decision on the application had been made;

the application is taken, at the commencement of that instrument, never to have been made.

42 Schedule 1 (item 25)

Repeal the item.

Customs (Prohibited Exports) Regulations 1958**43 Subregulation 2(1)**

Insert:

mercury means elemental mercury (Hg(0), CAS No. 7439-97-6), and includes mixtures of mercury (including alloys of mercury) with a mercury concentration of at least 95% by weight, but does not include non-Minamata Convention mercury.

non-Minamata Convention mercury means any of the following:

- (a) research mercury;
- (b) naturally occurring trace quantities of mercury present in:
 - (i) products such as non-mercury metals, ores or mineral products (including coal); or
 - (ii) products derived from the products mentioned in subparagraph (i);
- (c) unintentional trace quantities of mercury in chemical products.

research mercury means mercury to be used for laboratory-scale research or as a reference standard.

44 Regulation 4A (heading)

Repeal the heading, substitute:

4A Exportation of chemicals**45 Before subregulation 4A(1)**

Insert:

Exportation of chemicals mentioned in Schedule 2

46 After subregulation 4A(1)

Insert:

Exportation of mercury

(1AA) The exportation from Australia of mercury is prohibited unless:

- (a) a permission to export the mercury has been granted in writing under any of the following:
 - (i) the *Agricultural and Veterinary Chemicals (Administration) Regulations 1995*;
 - (ii) the *Industrial Chemicals (General) Rules 2019*;
 - (iii) the *Therapeutic Goods Regulations 1990*; and
- (b) the permission is produced to a Collector.

Exportation of research mercury

- (1AB) The exportation from Australia of research mercury is prohibited unless:
- (a) both:
 - (i) a permission to export the chemical has been granted in writing under the *Agricultural and Veterinary Chemicals (Administration) Regulations 1995*; and
 - (ii) the permission is produced to a Collector; or
 - (b) both:
 - (i) a permission to export the chemical has been granted in writing by the Minister or an authorised officer under this regulation; and
 - (ii) the permission is produced to a Collector.

47 Before subregulation 4A(1A)

Insert:

Derivatives

48 Before subregulation 4A(2)

Insert:

Applications and permissions

49 Subregulations 4A(2), (3) and (4)

After “(1)(b)”, insert “or (1AB)(b)”.

50 Subregulations 4A(5) and (6)

Omit “(1)(b) or”, substitute “(1)(b), (1AB)(b) or”.

51 Before subregulation 4A(7)

Insert:

Definitions

52 In the appropriate position in Part 5

Insert:

21 Transitional matters—amendments made by the *Minamata Convention on Mercury (Consequential Amendments) Regulations 2021*

Application of amendments

- (1) The amendments of these Regulations made by the *Minamata Convention on Mercury (Consequential Amendments) Regulations 2021* apply in relation to the exportation of mercury, or research mercury, from Australia on or after the commencement of that instrument (whether the application for permission to export was made before, on or after that commencement).

Pending applications for permissions to export mercury

- (2) If:

-
- (a) an application was made before the commencement of the *Minamata Convention on Mercury (Consequential Amendments) Regulations 2021* for a permission under paragraph 4A(1)(b) of these Regulations to export mercury (within the meaning of these Regulations as amended by that instrument); and
 - (b) as at immediately before the commencement of that instrument, no decision on the application had been made;
- the application is taken, at the commencement of that instrument, never to have been made.

53 Part 1 of Schedule 2 (table item 25)

Repeal the item.

Customs (Prohibited Imports) Regulations 1956

54 Subregulation 2(1)

Insert:

mercury means elemental mercury (Hg(0), CAS No. 7439-97-6), and includes mixtures of mercury (including alloys of mercury) with a mercury concentration of at least 95% by weight, but does not include non-Minamata mercury.

Minamata Convention means the Minamata Convention on Mercury done at Minamata on 10 October 2013, as in force for Australia at the commencement of this definition.

Note: The Convention could in 2021 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

non-Minamata mercury means any of the following:

- (a) mercury to be used for laboratory-scale research or as a reference standard;
- (b) naturally occurring trace quantities of mercury present in:
 - (i) products such as non-mercury metals, ores or mineral products (including coal); or
 - (ii) products derived from the products mentioned in subparagraph (i);
- (c) unintentional trace quantities of mercury in chemical products.

55 After regulation 4AB

Insert:

4AC Importation of mercury

- (1) Subject to subregulation (2), the importation of mercury into Australia is prohibited unless:
 - (a) a permission to import the mercury has been granted in writing under any of the following:
 - (i) the *Agricultural and Veterinary Chemicals (Administration) Regulations 1995*;
 - (ii) the *Industrial Chemicals (General) Rules 2019*;
 - (iii) the *Therapeutic Goods Regulations 1990*; and
 - (b) the permission is produced to a Collector.

- (2) Subregulation (1) does not apply to the importation of mercury from a Party to the Minamata Convention.

56 After regulation 12

Insert:

13 Transitional matters—amendments made by the *Minamata Convention on Mercury (Consequential Amendments) Regulations 2021*

The amendments of these Regulations made by the *Minamata Convention on Mercury (Consequential Amendments) Regulations 2021* apply in relation to the importation of mercury into Australia on or after the commencement of that instrument.

Therapeutic Goods Regulations 1990

57 Regulation 2

Insert:

mercury means elemental mercury (Hg(0), CAS No. 7439-97-6), and includes mixtures of mercury (including alloys of mercury) with a mercury concentration of at least 95% by weight, but does not include non-Minamata mercury.

mercury-added products means the products listed in Part 1 of Annex A to the Minamata Convention that contain mercury, but does not include:

- (a) products essential for civil protection and military uses; or
- (b) products for research, calibration of instrumentation, or for use as reference standards; or
- (c) if no feasible mercury-free alternative for replacement is available—the following:
 - (i) switches and relays;
 - (ii) cold cathode fluorescent lamps and external electrode fluorescent lamps for electronic displays;
 - (iii) measuring devices; or
- (d) products used in traditional or religious practices; or
- (e) vaccines containing thiomersal as preservatives.

Minamata Convention means the Minamata Convention on Mercury done at Minamata on 10 October 2013, as in force for Australia from time to time.

Note: The Convention could in 2021 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

non-Minamata mercury means any of the following:

- (a) mercury to be used for laboratory-scale research or as a reference standard;
- (b) naturally occurring trace quantities of mercury present in:
 - (i) products such as non-mercury metals, ores or mineral products (including coal); or
 - (ii) products derived from the products mentioned in subparagraph (i);
- (c) unintentional trace quantities of mercury in chemical products.

58 After Part 2C

Insert:

Part 2CA—Prohibition on import, export or manufacture of certain therapeutic goods—international agreements**Division 1—Prescribed international agreements****10JA Prescribed international agreements**

- (1) For the purposes of subsection 9K(1) of the Act, the Minamata Convention is prescribed.
- (2) For the purposes of subsection 9K(3) of the Act, the Minamata Convention is prescribed.
- (3) Unless the contrary intention appears, an expression used in both this Part and the Minamata Convention has the same meaning in this Part as in that Convention.

Division 2—Prohibition on importation of mercury**10JB Importation of a therapeutic good that is mercury from a non-party to the Minamata Convention is prohibited unless approved by the Secretary before importation**

For the purposes of paragraph 9K(1)(a) of the Act, the importation into Australia of a therapeutic good that is mercury from a non-party to the Minamata Convention is prohibited unless the Secretary has, in accordance with Division 4, approved, in writing, the importation before the mercury is imported.

Division 3—Prohibition on export of mercury**10JC Export of a therapeutic good that is mercury is prohibited unless approved by the Secretary before exportation**

For the purposes of paragraph 9K(1)(b) of the Act, the export from Australia of a therapeutic good that is mercury is prohibited unless the Secretary has, in accordance with Division 4, approved, in writing, the export before the mercury is exported.

Division 4—Applications to import or export mercury**10JD Applications to import or export mercury**

- (1) A person may apply to the Secretary for approval:
 - (a) to import into Australia a therapeutic good that is mercury from a non-party to the Minamata Convention; or
 - (b) to export from Australia a therapeutic good that is mercury.

- (2) An application must:
 - (a) be in the form approved by the Secretary for the purposes of this paragraph; and
 - (b) include the information required by the form; and
 - (c) be accompanied by the fee (if any) mentioned in Part 2 of Schedule 9 for the application.
- (3) An application is taken not to have been made if the application does not comply with the requirements referred to in subregulation (2).
- (4) The Secretary may approve a form for the purposes of paragraph (2)(a).

10JE When approval may be granted—importation

The Secretary may approve an application under paragraph 10JD(1)(a) to import a therapeutic good that is mercury from a non-party (the *exporting party*) to the Minamata Convention only if the Secretary is satisfied that:

- (a) either:
 - (i) Australia has provided the exporting party with written consent to the import; or
 - (ii) a general notification of consent is in force for Australia in accordance with paragraph 7 of Article 3 of the Minamata Convention; and
- (b) the exporting party has provided written certification that the mercury is neither sourced from primary mercury mining nor excess mercury from the decommissioning of chlor-alkali facilities.

10JF When approval may be granted—export

Export to a Party to the Minamata Convention

- (1) The Secretary may approve an application under paragraph 10JD(1)(b) to export a therapeutic good that is mercury to a Party (the *importing Party*) to the Minamata Convention only if the Secretary is satisfied that :
 - (a) the importing Party has provided its written consent to the export; and
 - (b) the mercury is to be exported:
 - (i) for a use allowed to the importing Party under the Minamata Convention; or
 - (ii) for environmentally sound interim storage as set out in Article 10 of the Minamata Convention.

Export to a non-party to the Minamata Convention

- (2) The Secretary may approve an application under paragraph 10JD(1)(b) to export a therapeutic good that is mercury to a non-party (the *importing party*) to the Minamata Convention only if the Secretary is satisfied that the importing party has provided:
 - (a) its written consent to the export; and
 - (b) its written certification demonstrating that:
 - (i) it has measures in place to ensure the protection of human health and the environment; and
 - (ii) it has measures in place to ensure compliance with Articles 10 and 11 of the Minamata Convention; and

-
- (iii) the mercury will be used only for a use allowed under the Minamata Convention to a Party to the Minamata Convention or for environmentally sound interim storage as set out in Article 10 of the Minamata Convention.

Division 5—Mercury-added products

10JG Import, export and manufacture of therapeutic goods that are mercury-added products

For the purposes of subsection 9K(1) of the Act, the importation into, export from and manufacture in, Australia of therapeutic goods that are mercury-added products is prohibited.

10JH Manufacture of therapeutic goods containing mercury-added products

For the purposes of subsection 9K(3) of the Act, the manufacture in Australia of therapeutic goods that contain mercury-added products is prohibited.

59 In the appropriate position in Part 9

Insert:

Division 15—Application provisions relating to the Minamata Convention on Mercury (Consequential Amendments) Regulations 2021

79 Application of amendments made by the *Minamata Convention on Mercury (Consequential Amendments) Regulations 2021*

The amendments of these Regulations made by the *Minamata Convention on Mercury (Consequential Amendments) Regulations 2021* apply in relation to the importation into, export from, or manufacture in, Australia of therapeutic goods on or after the commencement of that instrument.