



Industrial Chemicals (General) Amendment (Minamata Convention on Mercury) Rules 2021

I, David Gillespie, Minister for Regional Health, make the following rules.

Dated 24 September 2021

David Gillespie
Minister for Regional Health

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1 Name

This instrument is the *Industrial Chemicals (General) Amendment (Minamata Convention on Mercury) Rules 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 (F2022N00034) (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Note: This table relates only to the provisions of this instrument as originally made.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 *Industrial Chemicals Act 2019*.

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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Industrial Chemicals (General) Rules 2019

1 Section 5

Insert:

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>).

2 Before paragraph 11(a)

Insert:

(aa) the Minamata Convention;

2A After section 12

Insert:

12A Mixtures of mercury

Mixtures of mercury (including alloys of mercury) with a mercury concentration of at least 95% by weight are prescribed:

- (a) for the purposes of paragraph 10(1)(f) of the Act; and
- (b) as a kind of industrial chemical for the purposes of paragraph 11(2)(e) of the Act.

3 After Part 1 of Chapter 6

Insert:

Part 1A—General

70A Definitions

In this Chapter:

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.

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.

4 Before section 71

Insert:

Division 1—Introduction and export of industrial chemicals other than mercury

5 At the end of Part 2 of Chapter 6

Add:

Division 2—Importation and export of an industrial chemical that is mercury

75A Importation of an industrial chemical that is mercury must be approved by the Executive Director

- (1) For the purposes of paragraph 163(1)(b) of the Act and subject to subsection (2) of this section, the importation of an industrial chemical that is mercury by a person is subject to the condition that the importation has been approved by the Executive Director, in writing, before the mercury is imported.

Note: Applications for approval must be made to the Executive Director in writing: see section 75C.

- (2) Subsection (1) does not apply to the importation of mercury from a country that is a Party to the Minamata Convention.

75B Export of an industrial chemical that is mercury must be approved by the Executive Director

For the purposes of paragraph 163(1)(b) of the Act, the export of an industrial chemical that is mercury by a person is subject to the condition that the export has been approved by the Executive Director, in writing, before the mercury is exported.

Note: Applications for approval must be made to the Executive Director in writing: see section 75C.

75C Applying for approval to import or export an industrial chemical that is mercury

- (1) A person may apply, in writing, to the Executive Director for approval to import, or export, an industrial chemical that is mercury.

Note 1: For general requirements relating to applications, see section 167 of the Act.

- (2) A joint application under subsection (1) may be made by 2 or more persons.

Further information

- (3) The Executive Director may, by written notice given to an applicant, request further information to be provided for the purposes of considering the application.

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- (4) The requested information must be provided within the period specified in the notice, which must not be less than 10 working days after the day the notice is given.
 - (5) If the requested information is not provided within the period mentioned in subsection (4), the Executive Director may take the application to be withdrawn.

75D Decision on application to import an industrial chemical that is mercury

- (1) The Executive Director must:
 - (a) consider an application for approval to import an industrial chemical that is mercury in accordance with this section; and
 - (b) make a decision on the application as soon as is reasonably practicable after the day the application is made.
- (2) In considering the application, the Executive Director must have regard to any further information provided by the applicant under subsection 75C(4).
- (3) After considering the application, the Executive Director must decide to:
 - (a) approve the importation of the mercury; or
 - (b) not approve the importation of the mercury.
- (4) The Executive Director must not approve the importation of the mercury from a non-Party (the *exporting Party*) to the Minamata Convention unless the Executive Director is satisfied that:
 - (a) either:
 - (i) Australia has provided the exporting Party with written consent to the importation; 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 certification that the mercury is not:
 - (i) sourced from primary mercury mining; or
 - (ii) excess mercury from the decommissioning of chlor-alkali facilities.
- (5) The Executive Director must give the applicant written notice of:
 - (a) the decision; and
 - (b) if the decision is to refuse the application—the reasons for the decision.

75E Decision on application to export an industrial chemical that is mercury

- (1) The Executive Director must:
 - (a) consider an application for approval to export an industrial chemical that is mercury in accordance with this section; and
 - (b) make a decision on the application as soon as is reasonably practicable after the day the application is made.
- (2) In considering the application, the Executive Director must have regard to any further information provided by the applicant under subsection 75C(4).
- (3) After considering the application, the Executive Director must decide to:
 - (a) approve the export of the mercury; or
 - (b) not approve the export of the mercury.

Export to a Party to the Minamata Convention

- (4) The Executive Director must not approve the export of the mercury to a Party (the **importing Party**) to the Minamata Convention unless the Executive Director is satisfied that:
- (a) the importing Party has provided its written consent to the export; and
 - (b) the mercury is being 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 country that is not a Party to the Minamata Convention

- (5) The Executive Director must not approve the export of the mercury to a non-Party (the **importing Party**) to the Minamata Convention unless the Executive Director is satisfied that:
- (a) the importing Party has provided its written consent to the export; and
 - (b) the importing Party has provided written certification demonstrating that:
 - (i) it has measures in place to ensure the protection of human health and the environment, and to ensure compliance with Articles 10 and 11 of the Minamata Convention; and
 - (ii) the mercury will be used only for a use allowed to the importing Party under the Minamata Convention, or for environmentally sound interim storage as set out in Article 10 of the Minamata Convention.

Notice of decision

- (6) The Executive Director must give the applicant written notice of:
- (a) the decision; and
 - (b) if the decision is to refuse the application—the reasons for the decision.

6 At the end of section 78

Add:

- ; (d) a decision under section 75D of this instrument to not approve the importation of mercury;
- (e) a decision under section 75E of this instrument to not approve the export of mercury.