



Hazardous Waste (Regulation of Exports and Imports) Regulations 1996

Statutory Rules No. 284, 1996

made under the

Hazardous Waste (Regulation of Exports and Imports) Act 1989

Compilation No. 12

Compilation date: 30 December 2021

Includes amendments up to: F2021L01843

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Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Hazardous Waste (Regulation of Exports and Imports) Regulations 1996* that shows the text of the law as amended and in force on 30 December 2021 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1—Preliminary

1 Name

This instrument is the *Hazardous Waste (Regulation of Exports and Imports) Regulations 1996*.

2 Authority

This instrument is made under the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*.

3 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) Basel Convention;
- (b) Basel export permit;
- (c) competent authority;
- (d) foreign country;
- (e) relevant person.

In this instrument:

Act means the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*.

4 Meaning of *household waste*

For the purposes of the definition of *household waste* in section 4 of the Act, *household waste* does not include waste listed in Annex IX (List B) to the Basel Convention, unless the waste is mixed with other waste listed in Annex IX (List B) to that Convention.

Part 2—Basel export permits

5 Basel export permit—information to be notified to competent authority of a foreign country

For the purposes of subsections 16A(1) and 26C(1) of the Act, the information about:

- (a) an application for a Basel export permit; or
- (b) an application for a variation of a Basel export permit;

that the Minister is required to notify to a competent authority of a foreign country is the information mentioned in Annex VA to the Basel Convention about the application.

Part 3—Record keeping and audits

6 Record keeping

Requirement to make and retain records

- (1) For the purposes of subsection 41D(1) of the Act, the following persons must make and retain the following records:
 - (a) for a person who holds a permit under the Act in relation to the import, export or transit of hazardous waste:
 - (i) each document (if any) that the person is required to keep in accordance with a condition of the permit; and
 - (ii) each other document that is made by the person, or that comes into the person's possession, and is relevant to showing whether the person has complied, or is complying, with the permit or any requirements of the Act or regulations made under the Act;
 - (b) for a person who has been notified under subsection 33G(1) of the Act that a transit permit is not required for carrying out a transit proposal—each document that:
 - (i) is made by the person or that comes into the person's possession; and
 - (ii) is relevant to showing whether the criteria mentioned in paragraphs 33G(1)(a), (b), (c) and (d) of the Act are satisfied, or continue to be satisfied, for the transit proposal;
 - (c) for a person who has been given an order under Part 3 of the Act:
 - (i) each document (if any) that the person is required to keep in accordance with the order; and
 - (ii) each other document that is made by the person, or that comes into the person's possession, and is relevant to showing whether the person has complied, or is complying, with the order or any requirements of the Act or regulations made under the Act.

Period for which records must be retained

- (2) A person who is required to retain records under this section must retain each such record for at least the period of 5 years starting on the day the record is made by the person or comes into the person's possession.

Form in which records must be retained

- (3) A person who is required to retain records under this section must retain each such record in a form that is:
 - (a) dated with the date the document is created or with the date the document comes into the person's possession; and
 - (b) for a document created by the person—accurate and legible; and
 - (c) able to be audited; and

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(d) in electronic or paper form.

- (4) If a record is not in English, the person must obtain a translation of the record into English and retain the translation for at least the period of 5 years starting on the day the translation is obtained.

Alteration or defacing of records

- (5) A person who is required to retain a record under this section must:
- (a) not alter or deface the record; and
 - (b) take reasonable steps to prevent the record from being altered or defaced by another person.
- (6) However, subsection (5) does not prevent a person from making notations or marking on the record in accordance with any ordinary practice.
- (7) If a person makes notations or markings on the record in accordance with ordinary practice, the person required to retain the record under this section must also retain, for at least the period mentioned in subregulation (2) or (4) (as applicable):
- (a) if reasonably practicable—a copy of the original record without notations or markings; and
 - (b) copies of the record that show how the record has changed over time.

Note: A person may commit an offence of strict liability or be liable to a civil penalty if the person is required to retain a record in accordance with this provision and the person fails to comply with the requirement (see subsections 41D(4) and (5) of the Act).

7 Conduct of audit

For the purposes of paragraph 53(3)(a) of the Act, an auditor must conduct an audit:

- (a) as expeditiously as reasonably practicable; and
- (b) in a way that results in minimal interference to the operations in relation to which the audit is conducted.

8 Process after audit completed

- (1) For the purposes of subsection 53(3) of the Act, an auditor who completes an audit must:
- (a) as soon as reasonably practicable after the audit is completed, notify the relevant person for the audit, orally or in writing, that the audit is completed; and
 - (b) within 14 days after the day the audit is completed, make a written report (an **audit report**) of the audit and give a copy of the audit report to:
 - (i) the Secretary, in the manner approved by the Secretary; and
 - (ii) the relevant person for the audit.
- (2) The audit report must include the following:
- (a) the name of the auditor;

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- (b) the day the audit commenced, the day the audit was completed, and the total time spent (in hours) conducting the audit;
 - (c) the name of the relevant person for the audit;
 - (d) a description of the operations to which the audit relates;
 - (e) a description of the scope of the audit;
 - (f) the findings of the audit including whether, in the auditor's opinion, there is, or there has been, a failure to comply with the requirements of the Act in relation to a matter to which the audit relates, including a contravention of the conditions of a permit (if any);
 - (g) the reasons for the auditor's findings.
- (3) The audit report may also:
- (a) identify any risk of a potential non-compliance with a requirement of the Act in relation to a matter to which the audit relates; and
 - (b) include recommendations that any of the following actions be taken:
 - (i) action to address any non-compliance with any of those requirements;
 - (ii) action to address the risk of a potential non-compliance with any of those requirements.

Part 4 Application and transitional provisions

Division 1 Transitional matters relating to the Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment Regulations 2021

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Part 4—Application and transitional provisions

Division 1—Transitional matters relating to the Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment Regulations 2021

9 Application of amendments

Household waste

- (1) Section 4, as inserted by the amending instrument, applies in relation to the import, export or transit of hazardous waste on or after the commencement day.

Notification to competent authority

- (2) Section 5, as inserted by the amending instrument, applies in relation to the following:
- (a) an application for a Basel permit made on or after the commencement day;
 - (b) an application for a Basel permit made before the commencement day if the application is varied on or after that day;
 - (c) an application made on or after the commencement day for a variation of a Basel permit, whether the permit was granted before, on or after the commencement day.

Record-keeping

- (3) Section 6, as inserted by the amending instrument, applies in relation to the following:
- (a) a permit granted, under the Act, on or after the commencement day in relation to the import, export or transit of hazardous waste;
 - (b) a notification given, under subsection 33G(1) of the Act, on or after the commencement day;
 - (c) an order given, under Part 3 of the Act, on or after the commencement day.
- (4) In this section:

amending instrument means the *Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment Regulations 2021*.

commencement day means the day the amending instrument commences.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Number and year	FRLI registration or gazettal	Commencement	Application, saving and transitional provisions
1996 No. 284	12 Dec 1996	12 Dec 1996	
2001 No. 203	2 Aug 2001	2 Aug 2001	—
2003 No. 83	8 May 2003	8 May 2003	—
2005 No. 20	1 Mar 2005 (F2005L00156)	2 Mar 2005	—
2005 No. 253	15 Nov 2005 (F2005L03452)	16 Nov 2005	—
2007 No. 34	2 Mar 2007 (F2007L00553)	3 Mar 2007	—
2008 No. 231	2 Dec 2008 (F2008L04513)	3 Dec 2008	—
2010 No. 229	22 July 2010 (F2010L02115)	23 July 2010	—
74, 2014	16 June 2014 (F2014L00723)	17 June 2014	—

Name	Registration	Commencement	Application, saving and transitional provisions
Acts and Instruments (Framework Reform) (Consequential Amendments) Regulation 2016	29 Feb 2016 (F2016L00170)	Sch 1 (item 20): 5 Mar 2016 (s 2(1) item 1)	—
Hazardous Waste (Regulation of Exports and Imports) Amendment (Hexachlorobenzene) Regulation 2016	2 Sept 2016 (F2016L01383)	Sch 1 (item 1): 3 Sept 2016 (s 2(1) item 1)	—
Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment (2017 Measures) Regulations 2017	29 June 2017 (F2017L00788)	Sch 1 (items 6–9): 1 July 2017 (s 2(1) item 1)	—
Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment Regulations 2021	20 Dec 2021 (F2021L01843)	Sch 1 (items 91–95): 30 Dec 2021 (s 2(1) item 1)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
Part 1	ad F2021L01843
r 1	rs No 203, 2001 am F2021L01843
r 2	rep LA s 48D ad F2021L01843
r 3	am No 203, 2001; No 34, 2007; F2016L00170 rs F2021L01843
r 4	rs No 203, 2001; F2021L01843
Part 2	
Part 2	ad F2021L01843
r 5	am F2017L00788 rs F2021L01843
r 5A	ad No 203, 2001 rs No 83, 2003; No 20, 2005 am No 253, 2005 rs No 74, 2014; F2016L01383 rep F2021L01843
r 5B.....	ad No 203, 2001 rep No 83, 2003 ad No 34, 2007 rep No 74, 2014
r 5C.....	ad No 231, 2008 am No 229, 2010 rep No 74, 2014
Part 3	
Part 3	ad F2021L01843
r 6	am F2017L00788 rs F2021L01843
r 7	rs F2021L01843
r 8	am No 34, 2007 rs F2021L01843
Part 4	
Part 4	ad F2021L01843
Division 1	
Division 1	ad F2021L01843
r 9	ad F2017L00788

Endnote 4—Amendment history

Provision affected	How affected
Schedule 1	rs F2021L01843 rs No 203, 2001 am F2017L00788 rep F2021L01843