

Discussion Document

Proposed Amendments to the
*Cross-Border Movement of Hazardous
Waste and Hazardous Recyclable
Material Regulations.*



Unless otherwise specified, you may not reproduce materials in this publication, in whole or in part, for the purposes of commercial redistribution without prior written permission from Environment and Climate Change Canada's copyright administrator. To obtain permission to reproduce Government of Canada materials for commercial purposes, apply for Crown Copyright Clearance by contacting:

Environment and Climate Change Canada
Public Inquiries Centre
12th Floor, Fontaine Building
200 Sacré-Coeur Boulevard
Gatineau QC K1A 0H3
Telephone: 819-938-3860
Toll Free: 1-800-668-6767 (in Canada only)
Email: enviroinfo@ec.gc.ca

© His Majesty the King in Right of Canada, represented by the Minister of Environment and Climate Change, 2023

Aussi disponible en français

Table of contents

1 Acronyms	2
2 Introduction	2
3 Purpose of this document	2
4 Context	3
5 Scope of the amendments	3
5.1 Basel Convention Amendments	3
5.2 Strengthening implementation and improving clarity	5
6 Costs of the proposed amendments	6
6.1 Reviewing the Regulations	7
6.2 Written contracts	8
6.3 Notification for international movements	8
6.4 Movement documents	8
6.5 Confirmation of disposal or recycling	8
6.6 Document retention	8
7 How to submit comments	9
8 Summary of consultation questions	9
8.1 Waste electrical and electronic equipment	9
8.2 Basel Ban Amendment	9
8.3 Costs of the proposed amendments	10

1 Acronyms

CEPA - *Canadian Environmental Protection Act, 1999*

ECCC – Environment and Climate Change Canada

HRM - Hazardous recyclable material

HW - Hazardous waste

OECD - Organisation for Economic Co-operation and Development

XBR - *Cross-Border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations*

2 Introduction

Environment and Climate Change Canada (ECCC) is proposing to amend the [*Cross-Border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations*](#) (XBR). These proposed amendments are intended to strengthen Canada's ability to meet its obligations under the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* (the Basel Convention). They are also intended to strengthen implementation and improve the clarity of the XBR.

ECCC previously initiated [consultations with stakeholders on the review of the definitions of hazardous waste \(HW\) and hazardous recyclable material \(HRM\) under the XBR in April 2022](#). One element of this review is included as part of the proposed amendments detailed below, which are being undertaken in an expedited manner. The remaining parts of the review of the definitions of HW and HRM as well as a broader review of other aspects of the XBR will occur at a later date.

3 Purpose of this document

The purpose of this document is to:

- Present the amendments to the XBR being considered as part of the expedited process and
- Provide an opportunity for stakeholders and interested parties to give feedback on the proposed amendments

All comments received will be considered in conducting further consultations and developing options to be undertaken as part of the amendments to the XBR.

4 Context

Under the *Canadian Environmental Protection Act, 1999*, (CEPA), ECCC administers the [XBR](#), which control the transboundary movements of HW and HRM. These Regulations consolidated and replaced the 3 previous regulations:

- [Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations](#)
- [PCB Waste Export Regulations, 1996](#), and
- [Interprovincial Movement of Hazardous Waste Regulations](#)

The XBR were published in *Canada Gazette, Part II* on March 17, 2021, and came into force on October 31, 2021.

The XBR aim to ensure that shipments of HW and HRM crossing Canada's international and inter-provincial or territorial borders reach their intended destination thus reducing the risk of release of contaminants to the environment, in Canada and abroad. They also contribute to Canada's ability to meet its obligations and commitments under 3 international instruments respecting the management and international movement of hazardous waste and other waste. These instruments are the:

- [United Nations Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal \(Basel Convention\)](#)
- [Decision of the Council of the Organisation for Economic Co-operation and Development \(OECD Decision\) on the Control of Transboundary Movements of Wastes Destined for Recovery Operations, OECD/LEGAL/0266](#); and
- [Canada-USA Agreement on the Transboundary Movement of Hazardous Wastes \(Canada-US Agreement\)](#)

The XBR set out the conditions for the export, import, and transit of HW and HRM shipped across the Canadian border. This helps to ensure that shipments of HW and HRM entering into, leaving, or passing through Canada can be tracked and controlled by ECCC, with the assistance of other government agencies. The XBR also ensure that the import and/or transit country has consented to the export of Canadian HW and HRM before any shipment takes place.

5 Scope of the amendments

The proposed amendments to the XBR fall into 2 main categories:

- allow Canada to meet its obligations and commitments under the Basel Convention, and
- strengthen implementation and improve clarity of the XBR

5.1 Basel Convention Amendments

During the 15th meeting of the Conference of the Parties to the Basel Convention (COP-15) in June 2022, a decision was made to amend the Basel Convention to control transboundary movements of non-hazardous electrical and electronic waste (e-waste). This is in addition to hazardous e-waste, which are currently controlled. To place Canada in a position to accept this

Basel Convention amendment, the XBR need to be amended to reflect the changes to the controls of e-waste.

In addition, Canada is proposing to fully align with obligations under the Basel Ban Amendment to the Basel Convention, and identifying the amendments that would be needed to the XBR to implement it. The Basel Ban Amendment prohibits the export of all waste defined as hazardous under the Convention when destined for final disposal and recycling and of waste defined as or considered hazardous only in Parties' domestic legislation when destined for final disposal from OECD members, the European Union, and Liechtenstein (Annex VII Parties) having ratified the Ban Amendment to all other States. The Basel Ban amendment entered into force in 2019. To place Canada in a position to ratify the Ban Amendment, the XBR need to be amended.

5.1.1 Waste electrical and electronic equipment

In decision BC-15/18, the Conference of the Parties to the Basel Convention amended Annexes II and VIII to the Basel Convention by adding two new listings that cover transboundary movement to all Parties for:

- Y49: non-hazardous waste electrical and electronic equipment
- A1181: hazardous waste electrical and electronic equipment

The amendments clarify the description of hazardous e-waste and subject non-hazardous e-waste to the prior informed consent procedure. These changes will enter into force for the Basel Convention on January 1, 2025. Until these changes come into effect, the existing entry A1180 in Annex VIII, which captures hazardous e-waste, and entries B1110 and B4030 under Annex IX, which were essentially exemptions for e-waste unless they contained an Annex I material, are in effect.

Currently under the XBR, e-waste is not fully captured. "Circuit boards and display devices and any equipment that contains them" (HAZ7 in Schedule 6) are controlled for movement to all countries for disposal and recycling operations. Furthermore, e-waste may be controlled if it meets certain criteria in the *Transportation of Dangerous Goods Regulations* (TDGR) for a dangerous good. It may also be controlled if it contains any of the substances on Schedule 2 or Schedule 7 to the XBR. However, for movements between OECD countries, "any part of electronic equipment – including scrap but excluding cells and batteries – that is suitable for base or precious metal recovery" (Schedule 9) is excluded from the definition of HRM.

Canada recognizes that there are presently OECD negotiations taking place to determine whether and how to incorporate the new e-waste amendments to the Basel Convention into the OECD Decision. Notwithstanding, ECCC is proposing to amend the definitions of HW and HRM to control *all* international movements (import, export, and transit) of non-hazardous and hazardous waste e-waste to fully align with the Basel Convention.

The controls on e-waste moving within Canada would remain essentially the same, with only interprovincial movements of hazardous e-waste for disposal being controlled. Some e-wastes moving within Canada for recycling purposes would be excluded. This would be to encourage recycling over disposal of these materials within Canada and to support extended producer responsibility and recycling programs.

Consultation questions:

- If your business may be subject to the proposed amendments to the Regulations, would you expect to encounter any challenges with implementing controls on all international movement of e-waste? Please elaborate.
- For each of the past 3 years, how many movements of e-waste, for which type of e-waste and in what quantities (in kilograms) has your business shipped to, or received from:
 - a. non-OECD countries
 - b. OECD countries
 - c. the US

5.1.2 Basel Ban amendment

ECCC is proposing to fully align with obligations under the Basel Ban amendment. This would be realized by adding a new provision that would prohibit the export of HW and HRM, as well as any waste considered hazardous for export for disposal when the importing or transit country considers it to be hazardous or is otherwise a hazardous waste under the Convention.

The Basel Ban amendment does not cover exports of non-hazardous waste, such as certain plastic wastes and wastes collected from households since these are considered “other wastes” and not “hazardous wastes” under the Basel Convention.

Consultation question:

- If you are an exporter that may be impacted by these proposed amendments to the XBR, would you expect to encounter any challenges with implementing the Basel Ban amendment? Please elaborate.

5.2 Strengthening implementation and improving clarity

In addition to the amendments to the XBR related to the Basel Convention, ECCC is proposing amendments to strengthen the implementation of the XBR by clarifying the requirements to be met before a shipment of HW or HRM is exported, as well as what constitutes a waste or recyclable material.

5.2.1 Addressing shipments without a permit

ECCC is proposing to clarify the point at which a permit must be obtained under the Regulations, before movement of a shipment for export begins. ECCC is also considering clarifying responsibilities of those involved in an export with respect to ensuring that a permit is obtained prior to an export of HW or HRM.

5.2.2 Approach to define waste and recyclable material

This proposed amendment formed part of the consultation on the review of the definitions of HW and HRM in April 2022. ECCC heard that most stakeholders are in favor of using a hybrid approach that allows an assessment of other characteristics or the use of Schedule 1 to define a waste and a recyclable material.

Currently, the first step of a 2-step process for defining whether something is a HW or a HRM under the XBR is to determine whether something is a waste or a recyclable material. This determination links to the disposal and recycling operations that are set out in column 2 of Parts 1 and 2 of Schedule 1. The second step is to determine whether it is a HW or a HRM as per the subheadings (a) through (e) under provisions 2(1), 3(1) and 4(1) and 5(1), respectively.

ECCC is proposing to include a hybrid approach to determine what is a waste or a recyclable material. This determination would be made either by using the existing reference to the list of disposal and recovery operations in Schedule 1 or via an assessment of other characteristics of the waste or the recyclable material itself. The goal is to keep the scope of what is currently captured under the Regulations the same, while allowing additional flexibility.

5.2.3 Rerouting to allow an interim operation prior to a final operation

Under Articles 14(1)(u) and 14(1)(v), as well as 26(1)(v) and 26(1)(w) of the XBR, when the permitted shipment of a HW or a HRM cannot be completed as intended, it must be returned to the country of origin or re-routed directly to a facility in the country of import for a final operation to occur. ECCC has recently become aware that, in certain cases, it is not always possible to re-route directly to an authorized facility for a final disposal operation. For example, in the case of imports into Canada, sometimes the HW or HRM must first be sent to a transfer station or to a facility that prepares the material to be accepted by the authorized facility.

The goal of these provisions is to be able to track the material until the final operation. As this goal remains environmentally sound, ECCC is proposing to modify the Regulations to allow an interim operation to occur before a final operation, and to require that both interim and final operators produce a certificate of operation after a rerouting. The time period for completing the final disposal operation will remain the same.

6 Costs of the proposed amendments

This section describes ECCC's assumptions about administrative and compliance costs for regulatees associated with the proposed amendments to the XBR. ECCC would like feedback from stakeholders on whether the assumptions are reasonable.

The Treasury Board Secretariat (TBS) defines *administrative cost* as "planning, collecting, processing and reporting information, and completing forms and retaining data required by the federal government to comply with a regulation". This includes filling out applications and forms, as well as finding and compiling data for audits and becoming familiar with information requirements.

Compliance costs are defined as "up-front capital costs, as well as ongoing maintenance and training costs that businesses face when complying with a regulation".

As with the current XBR, the requirements of the proposed amendments to the XBR that would continue to be associated with compliance costs include:

- maintaining space to keep documents (that is, filing cabinets and floor space or electronic storage)
- preparing contracts for international movements
- ensuring liability insurance for exporters, importers and carriers, and

- temporarily storing and making alternative arrangements to dispose of the waste or return it to Canada in the case of international shipments that cannot be received or disposed at destination

ECCC expects that the proposed amendments relating to e-waste (Section 5.1.1) would increase both administrative and compliance costs for companies, including small businesses that manage HW or HRM that are not captured under the current XBR, but that would be captured by the proposed amendments to the XBR.

Very few companies have been issued a permit for exports that would be covered by the Basel Ban Amendment. Since these companies are likely to find alternative markets within the OECD for future shipments, proposed amendments that would prohibit exports of HW and HRM as outlined under Section 5.1.2 would not have an impact on these businesses. ECCC would appreciate feedback from stakeholders if this is not the case.

ECCC does not expect that the clarification and administrative amendments outlined under Section 5.2 would result in a change in administrative or compliance cost for companies as these amendments would not impose additional requirements on regulatees. In addition, no additional companies will have to comply with the XBR as these amendments are not changing the scope of the definitions of HW and HRM.

The following sections outline ECCC's estimates for the time required to complete various tasks associated with requirements of the Regulations. The time estimates are used to calculate administrative costs of a task, or the costs to comply with regulatory requirements.

ECCC would like feedback from stakeholders on the validity of the time estimates to conduct tasks, as well as costs for complying with the proposed Regulations. ECCC is interested in gaining a better understanding of the companies that export or import HW or HRM that would be newly captured under the proposed Regulations. Specifically, ECCC would appreciate that stakeholders share the types of HW or HRM and the costs implications.

In addition to those that may be directly impacted, ECCC is interested in gaining a better understanding of the companies involved in the management of waste and recyclable material and how they may be indirectly impacted.

6.1 Reviewing the Regulations

For newly regulated permit holders, ECCC estimates that about **8 hours** would be required for an employee to read the Regulations and supporting documents to understand their administrative requirements. For carriers and permit holders with some knowledge of the Regulations, ECCC estimates that about **4 hours** would be required.

6.2 Written contracts

Contracts are required for each permit. On average there is one contract for each notification using the same parameters (waste types, quantities, etc.).

ECCC estimates that about **4 hours** per notification is required to prepare a final contract. ECCC also estimates that an average time of **1 hour** is required for contract renewal. This includes the time to develop the contract and to obtain signatures from all parties. In addition, some companies have a lawyer review the contracts. ECCC estimates that about **4 hours** of a lawyer's time per year for each company would be needed, as the content of all contracts is very similar given the requirements of the Regulations.

6.3 Notification for international movements

The average time required for an employee to complete a notification (permit application) using the electronic system is estimated to be **30 minutes**. Note that the time required to complete a notification for the first time may be higher, but the estimate takes into account that the time savings for subsequent notifications are significant. This is because many fields within the electronic system can be prepopulated from information already entered.

6.4 Movement documents

On average, ECCC estimates that it takes an employee **12 minutes** to complete part A, **3 minutes** to complete part B, and **3 minutes** to complete part C of a movement document using the electronic system.

6.5 Confirmation of disposal or recycling

The exporter or importer must provide ECCC with a confirmation of disposal or recycling within 30 days after the disposal of the HW or the recycling of the HRM. These reporting activities are linked to individual shipments under a permit. ECCC estimates that **5 additional minutes** per shipment are required to gather the information required, provide it to ECCC and file it.

6.6 Document retention

With respect to compliance costs, ECCC assumes that each exporter, importer, and carrier undertaking regulated activities would need to purchase a filing cabinet or electronic storage to keep copies of the required documents and would use office space to keep the cabinet. The cost estimate is **\$100/ year**.

7 How to submit comments

You are invited to provide comments on this discussion document during the 30-day comment period, which ends on April 21, 2023. Please provide the following information with your feedback:

- Size (number of employees) of your company, and
- Type of activity in which your company is involved (for example generator, exporter, importer, carrier, recycling, disposal)

A summary of the comments received will be published on ECCCC's website. The comments will be considered in the development of further consultations on specific issues and options to be undertaken as part of the amendments to the XBR.

Please send your comments on this discussion document to the contact information below. Please indicate "**Proposed XBR Amendments, March 2023**" in the subject line of your message. If you have any questions with respect to the consultation process, the discussion document, or the XBR, please contact us using the contact information below.

By email: mt-tm@ec.gc.ca

By mail:

Waste Reduction and Management Division
Environment and Climate Change Canada
351 St. Joseph Blvd., Place Vincent Massey, 9th floor
Gatineau QC K1A 0H3

You are welcome to further distribute this document.

8 Summary of consultation questions

8.1 Waste electrical and electronic equipment

- If your business may be subject to the proposed amendments to the Regulations, would you expect to encounter any challenges with implementing controls on all international movement of e-waste? Please elaborate.
- For each of the past 3 years, how many movements of e-waste, for which type of e-waste and in what quantities (in kilograms) has your business shipped to or received from:
 - a. non-OECD countries
 - b. OECD countries
 - c. the US

8.2 Basel Ban Amendment

- If you are an exporter that may be impacted by these proposed amendments to the XBR, would you expect to encounter any challenges with implementing the Basel Ban amendment? Please elaborate.

8.3 Costs of the proposed amendments

- From your experience, are the time estimates to conduct administrative tasks, as well as the costs for complying with the proposed Regulations accurate?
 - Reviewing the Regulations – *8 hours, new permit holders, and 4 hours, carriers and existing permit holders*
 - Preparing, reviewing, and renewing a contract – *4 hours, 4 hours and 1 hour respectively*
 - Completing a notification for international movements – *30 minutes*
 - Completing a movement document – *12 minutes for part A, 3 minutes for part B, 3 minutes for part C*
 - Completing the confirmation of disposal or recycling – *5 minutes*
 - Retaining documents – *\$100/year*
- If your company is involved in the management of waste and recyclable material, how might you be indirectly impacted with the proposed amendments to the Regulations?