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Live Animal Export Policy

Exemptions for livestock, live animals and animal reproductive material



Overview

Under Part 2 of Chapter 2 of the *Export Control Act 2020*, ('the Act') an applicant can apply for an exemption from one or more provisions of the Act or the Export Control (Animals) Rules 2021 ('the Rules') (including prescribed export conditions) in relation to relevant goods.

Purpose

This policy outlines the application and decision-making processes for applications for exemptions from one or more provisions of the Act for prescribed livestock and live animals (other than livestock). This policy applies to exemptions in exceptional circumstances, special commercial circumstances, or as a small and infrequent exporter. An application for exemption may be sought in a limited number of other circumstances, these are set out in subsection 52(1) of the Act.

Part 2 of Chapter 2 of the Rules sets out requirements for exemptions in relation to prescribed livestock and live animals, including when an exemption can be applied for and how long an exemption applies. Part 2 of Chapter 2 of the Rules does not apply to animal reproductive material, however an application for exemption for animal reproductive material may still be made under the Act.

This policy is not intended to be comprehensive and must be read in conjunction with the relevant legislation.

Application

Application form

Applicants seeking to be granted an exemption must use the approved form. The application must set out the basis upon which the exemption is being sought and include supporting documentation.

Livestock exporters seeking an exemption from operating under an approved arrangement must use the small and infrequent exemption application form.

Who may apply?

An application for exemption from one or more provisions of the Act or Rules may be made by any persons listed in subsection 53(1) of the Act, including:

- a person who wishes to export livestock, live animals or animal reproductive material
- the occupier of a registered establishment where export operations are or will be carried out
- the holder of an approved arrangement that covers export operations in relation to livestock
- the holder of an export licence that covers export operations in relation to livestock.

Period in which an application may be made

An application for an exemption is generally required to be made within the time period prescribed by section 2-8 of the Rules.

Basis for application

An exemption from a provision in the Act or the Rules may be sought in relation to prescribed livestock, prescribed live animals or prescribed animal reproductive material that are ‘relevant goods’, as they are to be exported under the circumstances set out in subsection 52(1) of the Act and section 2-7 of the Rules. These circumstances include, but are not limited to:

- in exceptional circumstances,
- in special commercial circumstances, or
- if the animals are to be exported by a person who intends to export no more than 400 animals of that kind in no more than 4 consignments during any calendar year.

Under subsection 52(3) of the Act, the Secretary (or delegate) may also grant an exemption from one or more provisions of the Act or Rules in relation to prescribed livestock, prescribed live animals or prescribed animal reproductive material (also called ‘relevant goods’) that are to be exported to a particular country if the Secretary (or delegate) is satisfied that it is not necessary for those provisions to be complied with for the purpose of ensuring that importing country requirements relating to the goods are met.

Consideration of an application for exemption

Under subsection 54(1) of the Act, the Secretary (or delegate) may grant an exemption if they are satisfied, having regard to any matter prescribed by the Rules or any other matter that they consider relevant, that:

- any requirements prescribed by the Rules are met, and
- it is appropriate to grant the exemption.

Relevant matters

In considering whether it is appropriate to grant an exemption, the Secretary (or delegate) may consider these relevant matters:

- whether the goods in respect of which the exemption is sought are ‘relevant goods’ (as defined in the Act)
- the basis on which the exemption is sought
- the risk to the health and welfare of the livestock or live animals, including the nature and extent of the risk, any risk management strategies proposed by the applicant
- previous performance of the applicant and their ability to manage any additional risks
- any importing country requirements and any relevant dispensations
- the impact on the exporter of approving or refusing to approve the exemption application
- the impact on industry, including the impact on Australia’s international trade
- any other matter that the Secretary (or delegate) considers relevant.

Decision on the application

Based on the information in the application and any other relevant information, the Secretary (or delegate) will consider whether the application satisfies the requirements of the Act and whether it is appropriate for the exemption to be granted.

For example, if the application is made on the basis the goods are ‘relevant goods’ because exceptional circumstances apply, the Secretary (or delegate) will consider if exceptional circumstances exist.

The Secretary (or delegate) will consider the circumstances on a case-by-case basis when deciding whether it would be appropriate to grant an exemption.

Exceptional circumstances

The term ‘exceptional circumstances’ carries its ordinary meaning and needs to be interpreted in its ordinary way by the Secretary (or delegate) when making their decision as to whether the goods are ‘relevant goods’.

An exceptional circumstance may be, but is not limited to, a peculiar circumstance that is unusual or out of the ordinary. Exceptional circumstances may or may not be unforeseen, depending on the context. Examples may include a natural disaster, state of emergency, extreme un-forecasted weather event or political or social instability.

Special commercial circumstance

A special commercial circumstance similarly carries its ordinary meaning and needs to be interpreted in its ordinary way by the Secretary or delegate when making their decision as to whether the goods are ‘relevant goods’. A special circumstance may be, but is not limited to, a particular purpose or place that is different from normal.

Small and infrequent exporters

For small and infrequent exporters, the delegate will consider whether the requirements prescribed by section 2-7 of the Rules are met:

- If the livestock are to be exported by a person who intends to export no more than 400 animals that are prescribed livestock in no more than 4 consignments during any calendar year.

Applications that must not be made

In accordance with the Act, an application for exemption must not be made in relation to:

- the export of livestock, live animals or animal reproductive material that are permanently prohibited (as listed in section 23 of the Act)
- the export of livestock, live animals or animal reproductive material if prohibited by a temporary prohibition determination made under section 24 of the Act.

Period of effect of exemption

Under section 2-10 of the Rules, an exemption granted under paragraph 54(1)(a) of the Act in relation to prescribed livestock and prescribed live animals remains in force (unless it is revoked under section 59 of the Act):

- for 5 years, or
- if another period is specified in the instrument of exemption – for the specified period.

An exemption granted under paragraph 54(1)(a) of the Act in relation to prescribed animal reproductive material remains in force unless it is revoked under section 59.

Conditions of exemption

If the Secretary (or delegate) grants an exemption, it may be subject to such conditions the Secretary (or delegate) considers necessary.

For the purposes of subsection 55(2) of the Act and section 2-9 of the Rules, the Secretary must have regard to whether imposing a condition on an exemption in relation to relevant goods will ensure that one or more objects of the Act (as set out in section 3) will be met in relation to the goods.

When deciding whether it is necessary to apply conditions on an exemption, the Secretary (or delegate) may consider whether the imposition of conditions would provide further mitigation against the risk to any relevant outcomes.

Notice of decision

Outcome of the decision

In accordance with section 56 of the Act, the Secretary (or delegate) will issue a written notice to notify the applicant of the outcome of the decision. An instrument of exemption, if granted, will be issued in writing.

Exemption may be revoked

The Secretary (or delegate) may revoke an exemption that is in force under section 59 of the Act. If the Secretary (or delegate) decides to revoke an exemption, the Secretary will give the holder of the exemption a written notice of the decision and the reasons for it.

