



Australian Government

Wheat Exports Australia

NOTIFIABLE MATTERS – GUIDELINES

Wheat Export Accreditation Scheme

Introduction

In accordance with sections 25 and 26 of the *Wheat Export Accreditation Scheme 2008* (the Scheme), accredited wheat exporters are required to report notifiable matters to Wheat Exports Australia (WEA).

A **notifiable matter** includes the occurrence of an event or change in circumstance which could have an impact on the accreditation of the exporter.

As a guide for accredited exporters, an event or circumstance is considered to be a notifiable matter if it constitutes grounds on which WEA could suspend or cancel an accreditation or if it is likely to lead to the conclusion that the exporter is no longer 'fit and proper' under the Scheme.

Such matters include changes in circumstances to those represented by the exporter to WEA during the application process (including in the Application Form and any subsequent information).

Background

It is a condition of accreditation under the Scheme that accredited exporters notify WEA when:

- (i) an event or circumstance occurs which may have a material impact on the accredited exporter's continuing eligibility as a fit and proper company (section 25), or¹
- (ii) a new executive officer is appointed (section 26).

This condition includes the obligation to report significant changes with respect to a related body corporate of the accredited exporter.

It is the responsibility of accredited exporters to track and report on notifiable matters.

Such notification must be submitted to WEA in the required format as soon as practical, but in any event within 14 days of the event or circumstance occurring or a new executive officer being appointed.

The following guide provides an explanation on the type and nature of issues that may constitute a notifiable matter. The list of events or occurrences is not intended to be exhaustive.

¹ For the purpose of the Scheme a reference to a 'company' includes a co-operative.

Notifiable Matters – Company or Co-operative

1. A notifiable matter occurs when:
 - a company or a co-operative becomes externally administered
 - a company is deregistered as a company under Part 2A2 of the *Corporations Act 2001*
 - a co-operative is de-mutualised or ceases to exist.
2. In a financial context, notifiable matters include material changes such as:
 - adverse changes to the financial position of the accredited exporter including material deviation from forecast
 - adverse changes to the accredited exporter's funding position and/or financial support available to it
 - withdrawal of, changes to or breaches of covenants and/or limits in a credit facility to an accredited exporter
 - withdrawal of or changes to a guarantee or funding facility provided by a related entity of the accredited exporter, for example an accredited exporter's parent company
 - an adverse change to an accredited exporter's credit rating or ratings outlook.
3. In a corporate governance context, notifiable matters include material changes in:
 - corporate structure
 - corporate policies
 - shareholdings or voting powers impacting on control of the accredited exporter
 - a related body corporate of the accredited exporter
 - major trading activities
 - risk management arrangements.
4. In relation to a fit and proper company, notifiable matters include matters where the company or an executive officer:
 - has been or becomes convicted of an offence against an Australian law or a foreign law, where the offence relates to dishonest conduct
 - has been or becomes convicted of an offence against an Australian law or a foreign law, where the offence relates to the conduct of business
 - has or has had an order for a pecuniary penalty made against it/them under the *Corporations Act 2001* or section 76 of the *Trade Practices Act 1974*
 - contravenes a condition of the company's accreditation
 - has been or becomes convicted of an offence against section 136.1, 137.1 or 137.2 of the Criminal Code
 - has committed a contravention or a serious contravention of a designated sanitary or phytosanitary measure
 - commits or becomes involved in a contravention of a United Nations sanctions provision
 - commits or becomes involved in a contravention of an Australian law or a foreign law where the contravention relates to trade in barley, canola, lupins, oats or wheat
 - commits any fraudulent acts relevant to or impacting on wheat export trading activities.

5. A notifiable matter also includes any other material change to the information provided to WEA (including but not limited to the Application Form and subsequent information) which may adversely impact on the accreditation of the exporter, including the export proposal.
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Notifiable Matters – New Executive Officer

6. A Notifiable Matter also occurs where a new executive officer is appointed.

The *Wheat Export Marketing Act 2008* defines an executive officer of a company as:

- a director of the company; or
 - the chief executive officer (however described) of the company; or
 - the chief financial officer (however described) of the company; or
 - the secretary of the company.
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Notifiable Matters – Forms

7. An accredited exporter must submit a report in the required format to WEA as soon as practicable but no later than 14 days from the occurrence of a notifiable matter.
 8. For the purpose of reporting a notifiable matter, two forms have been approved by WEA:
 - Report about Notifiable Matter Form
 - New Executive Officer Notification Form.
 9. These forms can be found online at:
<http://www.wea.gov.au/WheatExports/Forms090408.htm>
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Protected Confidential Information

In accordance with section 73 of the *Wheat Export Marketing Act 2008*, information may be protected confidential information if it is contained in a report given to WEA under the Scheme, and the person who gave the report claims the information is commercial-in-confidence information.

Accredited exporters making such a claim must mark the relevant information as ‘commercial-in-confidence’. Accredited exporters should note that WEA may disclose protected confidential information in some circumstances (as set out in section 74(3) of the *Wheat Export Marketing Act 2008*).