



Explanatory Statement

Excise (Concessional Spirits Approvals) Guidelines 2026

General outline of instrument

1. This instrument is made under subsection 77FF(5) of the *Excise Act 1901* (the Act).
2. The CEO (that is, the Commissioner of Taxation) may grant a person written approval under subsection 77FF(1) of the Act to use spirit for a specified industrial, manufacturing, scientific, medical, veterinary or educational purpose. Spirit delivered under an approval is classified to subitem 3.7 of the Schedule to the *Excise Tariff Act 1921* (Tariff Act) and does not attract excise duty.
3. This instrument sets out the matters that the CEO must consider when deciding whether or not to grant an approval under subsection 77FF(1) of the Act.
4. This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
5. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Date of effect

6. This instrument commences on the day after it is registered on the Federal Register of Legislation.

Background

7. Spirit that is free of excise duty under the Tariff Act (generally because it will be used for purposes other than in manufacturing an excisable beverage or for use as a fuel) is known as 'concessional spirit'.
8. Under subsection 77FF(1) of the Act, the CEO may grant an approval to a person to use concessional spirit for the following specified purposes:
 - (a) industrial (for example, as a refrigerant, solvent, cleaning agent)
 - (b) manufacturing (for example, in manufacturing particular foods or medicines, mouthwashes, toiletries)
 - (c) scientific (for example, as a reagent, solvent, preservative)
 - (d) medical (for example, as a solvent, sterilising agent, cleaning agent)
 - (e) veterinary (for example, as a solvent, sterilising agent, cleaning agent)
 - (f) educational (for example, laboratory use).
9. Approvals under subsection 77FF(1) of the Act are granted for the purpose of subitem 3.7 of the Schedule to the Tariff Act. This subitem provides that a quantity of spirit is duty free where:
 - (a) a person holds an approval under section 77FF of the Act to use the spirit for an industrial, manufacturing, scientific, medical, veterinary, or educational purpose, and

(b) the spirit is covered by the terms of that approval.

10. Subsection 77FF(5) of the Act requires the CEO to develop guidelines that they must have regard to when deciding whether or not to grant an approval.

11. The CEO most recently set out guidelines in the *Excise Concessional spirit approvals guidelines 2016 (No. 2) (2016 Guidelines)*. The 2016 Guidelines provide transparency for applicants and decision-makers about the matters relevant to granting an approval and managing associated risks to revenue.

12. Where the CEO does not grant an approval under subsection 77FF(1) of the Act, the person using the spirit will generally be required to hold an excise licence or to pay excise duty to receive the spirit.

13. This instrument repeals and replaces the 2016 Guidelines which would otherwise sunset on 1 October 2026. This instrument has the same substantive effect as the instrument it replaces.

Effect of this instrument

Section 6 – Guidelines

14. Concessional spirit that is delivered for home consumption must be used for an approved purpose and be subject to appropriate controls, otherwise the potential risk to excise revenue from these spirits being diverted for another purpose cannot be appropriately managed.

15. Before granting an approval under subsection 77FF(1) of the Act, the CEO must be satisfied that the spirit will be used for a specified purpose, consider any risks to revenue or of non-compliance, and determine whether conditions should be imposed to manage those risks.

16. Information provided in the application is used by the CEO when deciding whether to grant an approval. In circumstances where an application does not contain all information necessary to allow the CEO to make this decision, the approval cannot be granted.

17. A specified purpose means an industrial, manufacturing, scientific, medical veterinary or educational purpose that is not an excluded purpose.

18. Spirit will be used for an excluded purpose where it is:

- (a) used as a beverage or in the production of a beverage, other than as an incidental input.

Spirit will be used as an incidental input where, although it is added to a beverage, it does not significantly increase the alcohol content of the beverage or change its essential character. It is a matter of fact and degree whether the use of spirit should be regarded as 'incidental'.

For example, spirit that is added to a beverage as a flavouring or essence and which does not alter the essential character of the beverage will be an incidental input. This additive contributes flavour only and results in a negligible increase in the alcohol content of the final product.

In contrast, a spirit-based essence that is used as a base or a substantial component of an alcoholic beverage, such that it contributes materially to the alcohol content or to the nature and character of the final product, would not be regarded as an incidental input.

- (b) used in any product that may be consumed for an intoxicating effect, whether or not the product is a beverage.

This exclusion will apply to products that may be consumed for an intoxicating effect, including non-beverage products such as alcoholic jellies or ice blocks, but will not apply to products such as medicines and mouthwashes (which, although they contain spirit, are not consumed for an intoxicating effect).

- (c) used as a prescribed fuel or as a component of a prescribed fuel.

Where alcohol (ethanol) is used as a fuel or fuel component, it is classified to the relevant subitem of item 10 of the Schedule to the Tariff Act.. This applies regardless of whether the alcohol is used in an internal combustion engine or as a burner fuel.

- (d) for on-supply to another person, unless the on-supply is expressly permitted under the conditions of an approval granted under subsection 77FF(1) of the Act.

'On-supply' occurs when a person supplies goods (rather than using them) to another person for their use (for example, selling, transferring or otherwise providing the goods to someone else). As on-supply does not generally fall within the intended scope of 'use' for the purposes of subsection 77FF(1) of the Act, on-supply of the concessional spirit will be an excluded purpose unless it is expressly permitted under the conditions of the approval.

Conditions of approval

19. Paragraph 6(d) requires the CEO to consider whether an approval should be subject to any conditions. These conditions may relate to:

- (a) the duration of the approval
- (b) record keeping for the spirit
- (c) where the spirit may be stored
- (d) security arrangements for the spirit
- (e) suppliers from whom the spirit may be obtained
- (f) provision of a financial security by the applicant
- (g) any other conditions the CEO considers necessary (for example, reporting requirements).

20. The ability to impose conditions allows the CEO to apply proportionate and targeted controls where risks are identified, including the risk of diversion, misuse or inappropriate use of spirit. Conditions support ongoing accountability and visibility for concessional spirit, reduce the likelihood that spirit is supplied or used in a manner inconsistent with the excise framework and protect the revenue.

Section 7 - Consideration of purpose

21. Under section 7, the CEO must be satisfied that the spirit covered by an approval will be used for a 'specified purpose'.

22. The CEO must have regard to information in the application including information about the stated purpose for which the spirit will be used, whether this purpose is a specified purpose, the description of the spirit covered by the approval, the quantity, type and strength of the spirit, and the duration for which the spirit will be used for that purpose.

23. The CEO will consider the information provided in the application, and any other relevant matters, when determining whether they are satisfied as to the purpose for which the spirit will be used. Other relevant matters may include the applicant's compliance history, operational controls and internal governance processes.

24. For example, the CEO may not be satisfied where the quantity, type and strength of the spirit described in the application is disproportionate to the stated purpose for which the spirit will be used. Indicators may include excessive quantities of spirit, higher-strength spirit, or characteristics inconsistent with the stated purpose that may indicate an increased risk of diversion or misuse.

25. Requiring the CEO to be satisfied as to the purpose for which the spirit will be used ensures that access to concessional spirit is limited to circumstances that are consistent with the object of the excise laws and the intended scope of the concession, and that appropriate controls are applied to protect the revenue.

Section 8 - Consideration of revenue and non-compliance risks

26. As excisable spirits attract relatively significant duty, the diversion or misuse of concessional spirit may result in material revenue loss. Given this, section 8 requires the CEO to consider the risk to revenue, and the likelihood of non-compliance by the applicant with the Excise Acts, if an approval is granted.

27. When considering the extent and likelihood of these risks, the CEO must have regard to:

- (a) whether the applicant is fit and proper (taking into consideration the factors specified in subsection 8(2))
- (b) whether the spirit will be used in the course or furtherance of an enterprise
- (c) the applicant's ability to ensure safety and security of the spirit
- (d) whether the applicant has appropriate procedures in place relating to the management, control and movement of the spirit
- (e) the applicant's record keeping practices and ability to provide the CEO with access to those records
- (f) the likelihood that the spirit will be used for a purpose other than the purpose stated in the application for approval
- (g) whether the approval should include conditions to mitigate any revenue or non-compliance risks, and
- (h) any other matters the CEO considers relevant.

28. Consideration of these matters assists the CEO in assessing whether the applicant can be relied upon to manage excisable goods in a manner that both protects the revenue and is compliant with excise obligations.

Fit and proper person

29. When considering whether an applicant is fit and proper for the purposes of paragraph 8(1)(a), the CEO considers factors that are relevant to determining whether the applicant can be relied upon to comply with their obligations under the excise laws, including the conditions of their approval.

30. These factors reflect the 'fit and proper person' test in sections 39B and 39C of the Act, which are relevant to the CEO's discretion to grant or refuse to grant an excise licence. It is appropriate to apply the same considerations to decisions to grant or refuse to grant a concessional spirit permit because the risk to revenue is materially the same. Namely, granting access to excisable goods on which excise duty has not been paid, and ensuring those goods are dealt with in accordance with the Act. The fit and proper person framework is directed at assessing that risk, and applying these established criteria promotes consistency and transparency in decision-making, ensures that concessional spirits permits are granted only to suitable persons, and supports the protection of the revenue.

31. Therefore, relevant factors the CEO may consider include:

- (a) whether, within one year before the application, the applicant or a related person has been charged with an offence under the Excise Acts or an offence under a

Commonwealth, State or Territory law that is punishable by imprisonment of at least one year or a fine of at least 50 penalty units

- (b) whether, within 10 years before the application, the applicant or a related person was convicted of an offence covered by paragraph (a) above
- (c) the financial resources of the applicant
- (d) whether the applicant has provided false or misleading information
- (e) the applicant's, and a related person's, compliance history with laws administered by the CEO
- (f) where the applicant is a natural person, whether they or a related person is an undischarged bankrupt, and
- (g) where the applicant is a company, whether they or a related person is under administration.

32. When determining if an applicant is fit and proper, the CEO may also consider a related person of the applicant as there is the potential that a related person could impact or influence the applicant's management of concessional spirit under their control. A related person of the applicant is any person, other than the applicant, that the CEO considers is relevant to assessing whether the applicant is fit and proper including (but not limited to):

- (a) a spouse, employer, colleague or employee of the applicant (where the applicant is an individual)
- (b) any partners in a partnership (where the applicant is a partner in the partnership), and
- (c) a director, employee, or shareholder who participates in the management and control of the company (where the applicant is a company).

Compliance cost assessment

33. TBC

Consultation

34. Subsection 17(1) of the *Legislation Act 2003* requires the Commissioner to be satisfied that appropriate and reasonably practicable consultation has been undertaken before they make a legislative instrument.

35. As part of the consultation process, you are invited to comment on the draft determination and its accompanying draft explanatory statement.

Forward your comments to the contact officer by the due date.

Due date: 10 July 2026
Contact officer: Anthony Barnard
Email: Anthony.Barnard@ato.gov.au
Phone: (03) 9285 1974

Statement of compatibility with human rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Excise (Concessional Spirits Approvals) Guidelines 2026

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The CEO (that is, the Commissioner of Taxation) may grant a person an approval under subsection 77FF(1) of the *Excise Act 1901* (the Act) to use spirit for a specified industrial, manufacturing, scientific, medical, veterinary or educational purpose.

Spirit delivered under an approval is classified to subitem 3.7 of the Schedule to the *Excise Tariff Act 1921* and does not attract excise duty.

This instrument sets out the matters that the CEO must consider when deciding whether or not to grant an approval under subsection 77FF(1) of the Act.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms as it merely provides guidelines that the CEO must have regard to when determining whether or not to grant an approval under subsection 77FF(1) of the Act.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.