

EXPLANATORY STATEMENT

Issued by Authority of the Secretary, Department of Agriculture, Water and the Environment

Export Control Act 2020

Export Control (Poultry Meat and Poultry Meat Products) Rules 2021

Authority

The *Export Control Act 2020* (the Act) sets out the overarching legislative framework for the regulation of exported goods, including food and agricultural products, from Australian territory, and enables the Secretary of the Department of Agriculture, Water and the Environment (the Secretary) to make rules that detail the requirements and establish conditions relating to the export of certain goods. The Act provides provisions for the application of the Act and how the Act interacts with State and Territory laws.

The *Export Control (Poultry Meat and Poultry Meat Products) Rules 2021* (the Poultry Rules) prohibit the export of prescribed poultry and poultry products from Australian territory, or from a part of Australian territory (which includes Norfolk Island and certain areas adjacent to Norfolk Island), unless prescribed export conditions are adhered to. These conditions ensure the importing country requirements are satisfied, reflect industry standards, and meet Australia's international obligations. Prescribed poultry meat and poultry meat products are regulated by the Poultry Rules.

The Poultry Rules are made by the Secretary under section 432 of the Act. Section 432 of the Act provides that the Secretary may, by legislative instrument, make rules prescribing matters required or permitted by the Act, or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Several provisions in the Act set the parameters of the Secretary's rule-making power and either:

- provide examples of the kinds of things for which the Secretary may make provision in the rules; or
- set out the default matters for the provision and allow the Secretary to give further detail, or set additional requirements, in the rules.

Under section 289 of the Act, the Minister may give directions to the Secretary about the performance of the Secretary's functions or the exercise of the Secretary's powers in making rules under section 432 of the Act. Directions made by the Minister to the Secretary are legislative instruments but are not subject to disallowance or sunset. At the time of commencement, a Ministerial direction has not been made under section 289 of the Act for the purposes of rules relating to poultry meat or poultry meat products.

Purpose

The purpose of the Poultry Rules is to ensure poultry meat and poultry meat products exported from Australian Territory satisfy requirements to enable and maintain overseas market access. The Poultry Rules include measures to ensure exported poultry meat and poultry meat products comply with export requirements, are described accurately and are traceable. The Poultry Rules also include measures to ensure the integrity of poultry meat and poultry meat products exported from Australia.

By setting out key requirements for the export of poultry and poultry products in the Poultry Rules, and having those Rules made by the Secretary, the regulatory framework can be updated despite rapid changes to requirements. Many changes are technical matters, concerning the way that goods are to be produced, prepared, or exported. Having the capacity to change the Poultry Rules quickly is crucial to ensuring that Australian producers, processors and exporters do not experience disruption in market access and can continue to export goods that meet requirements. This is particularly important because one non-compliant export of goods can have significant consequences for other exports, including restrictions on, or the closure of, market access.

The Poultry Rules, in conjunction with the Act, set out the requirements that are particular to the export of poultry meat and poultry meat products from Australian territory. The operation of the provisions in the Act, in conjunction with the Poultry Rules and the *Regulatory Powers (Standard Provisions) Act 2014*, have also been extended to Norfolk Island and certain areas adjacent to Norfolk Island.

Wherever possible, the Poultry Rules have been made consistent with other commodity specific export rules that share the same requirements, to ensure consistency in the new framework for stakeholders and regulators that deal in multiple commodities. This will allow for a streamlined approach to regulating the different commodities that will be prescribed and make the framework more accessible to stakeholders.

Background

In 2015 the then Department of Agriculture (now the Department of Agriculture, Water and the Environment (the Department)) conducted a comprehensive review of the export of agricultural products through the *Agricultural Export Regulation Review* (the Review). The Review found most stakeholders accepted the current level of regulation and understood the need for it to be maintained to protect market access and Australia's reputation. However, it also recognised that there was scope for improvement, including increasing flexibility and opportunities for government-industry cooperation, reducing complexity and duplication, and strengthening compliance and enforcement arrangements.

Based on these findings, two regulatory options were considered:

- option one: maintain the existing regulatory arrangements;
- option two: consolidate and improve the legislative framework.

On considering the findings of the Review, the Australian Government agreed to improve the legislative framework to address the issues identified by the Review. As part of that process,

existing export-related requirements were streamlined and consolidated into an improved legislative framework comprising of the Act and commodity specific rules, which will support the Act. These improvements reduce duplication as well as make it easier to understand and comply with export requirements.

The improvements to the legislative framework are not intended to make significant changes to export policy or the current baseline of regulation. It is intended to provide a more consistent and clear framework that is flexible and responsive to emerging issues.

Impact and Effect

The Poultry Rules impose regulatory controls on poultry meat and poultry meat products that are to be exported from Australian territory so that these products meet trade requirements. These controls maintain and strengthen the existing regulatory controls and oversight for the export of goods.

Chapter 1 deals with formal and preliminary matters and sets out the special meanings of words and phrases used in the Rules.

Chapter 2 deals with matters relating to exporting goods. These include:

- defining prescribed goods;
- prohibiting the export of certain goods;
- applying for exemptions; and
- the issue of government certificates.

Chapter 4 deals with matters relating to registered establishments. These include:

- requirements for registration;
- conditions of registration;
- application for registration, renewal and variation, of registration;
- matters relating to applications; and
- allocation and variation of meat inspection services.

Chapter 5 deals with matters relating to approved arrangements. These include:

- requirements for approval;
- conditions of approval of an approved arrangement, including trade descriptions and official marks; and

- application for the approval a proposed arrangement and renewal and variation of an approved arrangement.

Chapter 7 deals with matters relating to export permits. These include:

- the period of effect of an export permit; and
- variation, suspension and revocation of an export permit.

Chapter 8 provides for other matters relating to export. These include:

- notices of intention to export
- trade descriptions and
- official marks.

Chapter 9 deals with matters relating to powers and officials. These include:

- provisions for the conduct of audits and carrying out assessments.
- provisions for powers and functions of authorised officers.

Chapter 10 provides for compliance and enforcement in relation to samples taken:

- in exercising monitoring or investigation powers; and
- dealing with things seized in exercising investigation powers.

Chapter 11 deals with miscellaneous matters such as:

- review of decisions;
- record-keeping;
- storage of samples;
- compensation for the damage or destruction of goods; and
- relevant Commonwealth liabilities.

Chapter 12 provides a scheme of transitional and savings provisions that will preserve the rights and liabilities under the former Orders (the old *Export Control (Poultry Meat and Poultry Meat Products) Orders 2011* and the old *Export Control (Prescribed Goods—General) Order 2005*).

Consultation

In accordance with the requirement for consultation under section 17 of the *Legislation Act 2003*, the Poultry Rules have been informed by consultation with stakeholder groups including industry representatives and state and territory regulatory agencies responsible for the administration and regulation of poultry establishments.

A consultation draft of the Poultry Rules was published on the Department website from 18 May 2020 to 26 June 2020. During this time, the Department consulted with stakeholders through 3 information sessions. One written submission was received and considered in further developing these rules.

An exposure draft of the Poultry Rules was released on 7 September 2020 as part of a package of revised commodity specific rules for 60 days of public consultation to ensure Australia's compliance with international obligations under the World Trade Organization's Sanitary and Phytosanitary Agreement. Two submissions were received during this time and were broadly supportive.

Feedback obtained from all consultation rounds was considered in the development of the Poultry Rules.

The Office of Best Practice Regulation within the Department of the Prime Minister and Cabinet (PMC) was consulted in the development of the Act and the subsequent Poultry Rules. The Act established a new regulatory framework which is supported by a number of subordinate legislative instruments, that aims to improve Australia's agriculture export legislation (which is a key initiative to support the export of Australian goods and products).

A Regulatory Impact Statement *Improvements to agriculture export legislation* [OBPR ID: 19535] was previously developed under this framework, with stakeholders included in the consideration of commodity specific rules and the mandatory obligations on Australian businesses and the relevant industries. A copy of the Regulation Impact Statement was previously provided with the explanatory memorandum to the Export Control Bill 2019.

Details and Operation

Details of the Poultry Rules are set out in Attachment A.

The Poultry Rules is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Poultry Rules commence at the same time as section 3 of the Act commences.

Other

The Poultry Rules is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

Details of the Export Control (Poultry Meat and Poultry Meat Products) Rules 2021

CHAPTER 1—PRELIMINARY

Part 1—Preliminary

1-1 Name

Section 1-1 provides that the name of the instrument is the *Export Control (Poultry Meat and Poultry Meat Products) Rules 2021* (the Poultry Rules).

1-2 Commencement

Section 1-2 provides for the Poultry Rules to commence at the same time as section 3 of the *Export Control Act 2020* (the Act).

Section 2 of the Act provides for section 3 of the Act to commence at a single time to be fixed by Proclamation. However, if section 3 of the Act does not commence before 3 am on 28 March 2021 (in the Australian Capital Territory), then it will commence at that time (item 2 of the table in section 2 of the Act).

1-3 Authority

Section 1-3 provides that the Poultry Rules are made under the Act.

1-4 Simplified outline of this instrument

Section 1-4 provides a simplified outline of the matters covered in the Poultry Rules and details the structure. The outline is not intended to be comprehensive and is included to assist readers. It is intended that readers will rely on the substantive provisions in the Poultry Rules.

The Poultry Rules prescribe matters and make other provisions in relation to poultry meat and poultry meat products for the purposes of the Act. Chapters in the Poultry Rules have the same name and number as corresponding Chapters in the Act. Gaps in the Chapter numbering in the Poultry Rules are because some Chapters of the Act are not relevant to the export of poultry meat and poultry meat products.

Part 2—Interpretation

Division 1—Definitions

1-5 Definitions

Section 1-5 contains definitions of key terms which are used in the Poultry Rules. The note at the start of this section lists some of the terms used in the Poultry Rules which are defined in section 12 of the Act. Such terms will have the same meaning in the Poultry Rules as they have in the Act.

Section 1-5 will also include some ‘signpost’ definitions that refer readers to the sections in which terms are substantively defined.

Some key concepts for the regulatory framework established by the Poultry Rules are **poultry**, **poultry meat** and **poultry meat product**. These are key concepts because they broadly set the scope of what can be regulated by the Poultry Rules; only **prescribed poultry meat** and **prescribed poultry meat products** are regulated by the Poultry Rules and these terms are defined, respectively, as poultry and poultry meat products that are prescribed goods under Division 1 of Part 1 of Chapter 2 of the Poultry Rules.

Both **poultry** and **poultry meat** are defined as having the same meaning as in the Australian Poultry Meat Standard. The note after the definition of **poultry** explains that clause 2 of the Australian Poultry Meat Standard defines poultry as including fowl, ducks, geese, turkeys, pigeons, pheasants, quail, guinea fowl and other avian species ordinarily consumed as food, but does not include ratites (emu or ostrich). A **poultry meat product** is defined as a product containing poultry meat.

An **approved auditor** means an individual who is approved under subsection 273(1) of the Act to conduct an audit referred to in section 9-1 of the Poultry Rules.

The **Australian Poultry Meat Standard** is defined as Australian Standard [AS 4465:2005], *Australian Standard for Construction of Premises and Hygienic Production of Poultry Meat for Human Consumption*, as that Standard exists at the commencement of the Poultry Rules.

A **carcase** means the whole dressed body of slaughtered poultry (the skeleton and attached musculature), excluding any part that has been removed from the dressed body (such as the head, feathers, viscera and blood).

A **carcase part** means any tissue or structure removed from a carcase and includes the head, viscera, offal and blood.

Section 1-5 also defines the term **exporter**, in the context of exporting prescribed poultry meat or poultry meat products, as the applicant for an export permit for the poultry meat or poultry meat products or, if an export permit has been issued for the poultry meat or poultry meat products, the holder of the permit. This is an important concept because it clarifies who is generally being regulated by the requirements of the Poultry Rules.

Other key concepts for the Poultry Rules that are defined in section 1-5 are **registered establishment**, which means an establishment that is registered (under Chapter 4 of the Act) for a kind of export operations in relation to prescribed poultry meat or poultry meat products, and **relevant importing country authority**, which means the authority or body that is responsible for regulating the importation of poultry meat or poultry meat products into that country from Australian territory.

The purpose of the definitions of **resources industry structure** and **installed** is to provide certainty around the kinds of structures (for example, oil rigs and similar off-shore structures) that are covered by the Poultry Rules. Goods consigned to a *resource industry structure* that is **installed** in specified areas are not required to comply with prescribed export control conditions (see paragraph 2-2(f) of the Poultry Rules). The definition of **resources industry structure** means a resources industry fixed structure (as defined in the *Sea Installations Act 1987*) and resources industry mobile unit (as defined in the *Sea Installations Act 1987*) that is not a vessel. This definition of **resources industry structure** includes a fixed structure (including a pipeline) or a moveable or floatable structure (that is not a vessel) that is used off-shore wholly or principally for exploring or exploiting natural mineral resources.

1-6 Meaning of loaded for export

Section 1-6 provides a definition for when poultry meat or poultry products are **loaded for export**. This is when the poultry meat or poultry meat products are placed into a container system unit at a registered establishment for export, or are loaded into or onto an aircraft or a vessel for export without first being placed into a container system unit.

This stage in the export supply chain is an important point of regulatory control before a consignment of poultry meat or poultry meat products leaves Australian territory. There are certain obligations that apply at this stage in the supply chain and the definition ensures these persons know when these obligations apply. These obligations under the Poultry Rules include:

- that poultry meat transport vehicles and container system units used to transport prescribed poultry meat or poultry meat products must have accurate measuring devices to assess whether the applicable conditions of the Act are complied with during transport and loading of the poultry meat and poultry meat products (section 5-12 of the Poultry Rules);
- that prescribed poultry meat and poultry meat products must, at the time they are loaded for export, be packaged to effectively protect them from contamination and deterioration (section 5-14 of the Poultry Rules) under the conditions which they are loaded, stored, and transported from Australian territory;
- that prescribed poultry meat and poultry meat products must not be loaded for export in a container system unit or area on an aircraft or vessel, unless the container system unit or area used for loading is clean, free from contamination that could adversely affect the product during the flight or voyage, and if necessary, has appropriate and adequate refrigeration (section 5-15 of the Poultry Rules); and
- that a trade description must be applied no later than the time the prescribed poultry meat and poultry meat products that are intended to be exported are packed (subsection 5-18 of the Poultry Rules).

Division 2—Other interpretation provisions

1-7 Modification of certain terms used in the Australian Poultry Meat Standard

Subsection 1-7(1) provides that, for the purpose of the Poultry Rules, the Australian Poultry Meat Standard is modified. The relevant modifications are set out in subsections 1-7(2) and 1-7(3) of the Poultry Rules. It is necessary to make these modifications to ensure consistency with terms used in the Poultry Rules and the Act.

The Australian Poultry Meat Standard is a freely available standard that has been approved by the Australia and New Zealand Ministerial Forum on Food Regulation. This standard is available on the CSIRO Publishing's website (<https://www.publish.csiro.au>).

Subsection 1-7(2) has the effect that a reference to the 'operator of premises or an establishment' in the Australian Poultry Meat Standard is to be read, in the context of the Poultry Rules, as a reference to the occupier of an establishment. This ensures consistency between the Australian Poultry Meat Standard, the Poultry Rules and the Act in respect of the requirements and conditions that apply to occupiers of an establishment.

The note following subsection 1-7(2) explains that the terms *establishment* has the same meaning as *premises* in section 12 of the Act.

Subsection 1-7(3) has the effect that a reference to 'poultry meat processing premises' or 'poultry processing premises' in the Australian Poultry Meat Standard is to be read, in the context of the Poultry Rules, as a reference to an establishment where operations to prepare poultry meat or poultry meat products for export are carried out. This ensures consistency between the Australian Poultry Meat Standard, the Poultry Rules and the Act in respect of the requirements and conditions that apply to operations at an establishment.

1-8 Circumstances in which alternative procedure, standard or other requirement is taken to meet requirements of Australian Poultry Meat Standard

Section 1-8 sets out the circumstances in which an alternative procedure, standard or other requirement is, for the purposes of the Poultry Rules, taken to meet the requirements of the Australian Poultry Meat Standard. This is in circumstances where:

- the Australian Poultry Meat Standard requires a particular technique to be implemented in carrying out operations to prepare prescribed poultry meat or poultry meat products for export; and
- meeting the requirements of the Australian Poultry Meat Standard is a condition of the registration of the registered establishment where operations to prepare the poultry meat or poultry meat products for export are carried out.

Section 1-8 has the effect that where an approved arrangement:

- covers operations to prepare the poultry meat or poultry meat products for export; and
- provides for an alternative procedure, standard or requirement to be implemented in carrying out those operations,

the implementation of that alternative procedure, standard or requirement when carrying out operations to prepare prescribed poultry meat or poultry meat products for export is taken to meet the requirement in the Australian Poultry Meat Standard to use a particular technique.

The purpose of section 1-8 is to provide flexibility to allow for innovation in preparing poultry meat and poultry meat products, while maintaining the integrity of the goods. The alternative procedures, standards or other requirements will not be taken to be fulfilling the Australian Poultry Meat Standard unless they have been approved as part of an approved arrangement that covers operations to prepare the poultry meat or poultry meat products for export at the registered establishment.

The first note following section 1-8 explains that the holder of an approved arrangement may need to apply to the Secretary under section 161(1)(b) of the Act to approve a variation of the approved arrangement in order to implement an alternative procedure, standard or other requirement.

The second note following section 1-8 alerts notifies the reader to the fact that the holder of an approved arrangement may commit an offence or be liable to a civil penalty under section 163 of the Act if they implement a variation to their approved arrangement that has not been approved by the Secretary in accordance with the Act.

CHAPTER 2—EXPORTING GOODS

Part 1—Goods

Division 1—Prescribed goods

Division 1 of Part 1 of Chapter 2 of the Poultry Rules sets out which kinds of goods will be ***prescribed goods*** for the purposes of the Act. Prescribed goods are subject to the regulatory controls imposed by the Act, including the requirement to comply with the prescribed export conditions.

2-1 Poultry meat and poultry meat products that are prescribed goods

Subsection 28(1) of the Act allows the Secretary to prescribe kinds of goods for the purpose of the Act. A kind of good prescribed by rules made for the purposes of subsection 28(1) is a ***prescribed good***. The Act regulates the export of ***prescribed goods***.

Subsection 2-1(1) prescribes poultry meat or poultry meat products that are intended to be exported as food to be ***prescribed goods*** for the purposes of subsection 28(1) of the Act. This means that goods that:

- meet the definition of ***poultry meat*** or ***poultry meat products*** in section 1-5 of the Poultry Rules; and
- are intended to be exported as food,

will be subject to the regulatory controls in the Act and the Poultry Rules, including the requirement to comply with prescribed export conditions.

This general rule is, however, subject to the express exceptions set out in subsection 2-1(3), which details the poultry meat and poultry meat products that are generally taken not to be prescribed goods, and the circumstances set out in section 2-2 of the Poultry Rules which details the poultry meat and poultry meat products that are taken not to be prescribed goods.

The first note following subsection 2-1(1) explains the meaning of ***poultry*** and refers the reader to section 1-5 of the Poultry Rules and clause 2 of the Australian Poultry Meat Standard.

The second note following subsection 2-1(1) notifies the reader to the fact that the term ***food*** is defined in section 12 of the Act. This definition provides that ***food*** includes any substance or thing of a kind used, or capable of being used, for human consumption, or as an ingredient or additive in any substance or thing of a kind used or capable of being used for human consumption, whether or not the substance or thing is in a condition fit for human consumption.

The third note following subsection 2-1(1) explains that poultry and poultry meat products covered by subsection 2-1(1) of the Poultry Rules are taken not to be ***prescribed goods*** for the purposes of the Act in the circumstances prescribed by section 2-2 of the Poultry Rules. The note also refers the reader to section 12 of the Act for the definition of the term ***prescribed goods***.

Subsection 2-1(2) provides that poultry meat or poultry meat products listed under subsection 2-1(3) will be considered to be prescribed poultry meat or poultry meat products (***prescribed goods***) for the purpose of subsection 28(1) of the Act only where the goods are intended to be exported to a particular country (the ***importing country***) as food and one or more requirements of the Act must be met in order to meet an importing country requirement.

In such circumstances the goods will be considered prescribed goods (and thus be subject to the requirements of the Act and the Poultry Rules) for the purposes of importing to that country, but will not be prescribed goods when exported to another country that does not have the same importing requirements.

The example following subsection 2-1(2) demonstrates that poultry meat extracts will be prescribed poultry meat products if a requirement of the Act would need to be complied with in relation to the poultry meat extracts for the purpose of meeting an importing country requirement.

The note following subsection 2-1(2) explains to the reader that the Act will apply to poultry meat and poultry meat products in the same way it applies to goods prescribed for the purposes of the Act under subsection 2-1(1).

Subsection 2-1(3) lists the poultry meat and poultry meat products that are not prescribed goods for the purposes of subsection 28(1) of the Act, even if they would ordinarily fall within the definition of ***poultry meat or poultry meat product*** and are intended for export as food. Goods listed in subsection 2-1(3) will only be subject to the regulatory controls set out in the Act and the Poultry Rules (including the requirement to comply with the prescribed export conditions) to the extent that they also fall within subsection 2-1(2). The goods listed in subsection 2-1(3) are:

- soup, soup powder or soup concentrate derived from poultry meat;
- poultry meat extracts;
- tallow derived from poultry meat;
- gelatine derived from poultry meat;
- regenerated collagen products derived from poultry meat;
- poultry meat products containing less than 5% mass of poultry meat;
- poultry meat or poultry meat products for export in a consignment of not more than 10 kilograms; and
- poultry meat or poultry meat products for export to New Zealand for consumption in New Zealand.

The terms ***poultry meat extract***, ***tallow***, ***animal food*** and ***pharmaceutical material*** are defined in section 1-5 of the Poultry Rules.

The note following subsection 2-1(3) notifies the reader that poultry meat or poultry meat products covered by subsection 2-1(1) are prescribed goods if they are for export to New Zealand but are not for consumption in New Zealand.

Subsection 2-1(4) provides that the following goods are not prescribed goods for the purposes of subsection 28(1) of the Act:

- poultry meat or poultry meat products that are animal food;
- poultry meat or poultry meat products that are pharmaceutical material.

The purpose of section 2-1 is to remove barriers to trade where there is minimal risk to food safety and human and animal health, while ensuring importing country requirements are met. This provides flexibility to increase or decrease the level of regulation for the export of poultry meat or poultry meat products where there are changes in importing country requirements. This also allows for the regulation of poultry meat and poultry meat products for export to focus on exports that attract the most risk.

2-2 Poultry meat and poultry meat products that are taken not to be prescribed goods

Subsection 28(4) of the Act allows the rules to prescribe that a kind of goods is taken not to be prescribed goods for the purposes of the Act in specified circumstances.

Section 2-2 is made for the purposes of subsection 28(4) of the Act. It sets out the circumstances where poultry meat and poultry meat products that are prescribed under subsections 2-1(1) and (2) of the Poultry Rules are taken not to be prescribed goods for the purposes of the Act.

It is not necessary for the poultry meat or poultry meat products to be subject to the regulatory controls in the Act in the circumstances listed in section 2-2, as these goods are:

- intended to be consumed in transit (paragraphs 2-2(a) and (b)) on a flight or voyage; or
- being transited through Australia (paragraphs 2-2(c) and (d)); or
- not being imported into another country (paragraphs 2-2(e) and (f)) but to an external Territory or a *resources industry structure*.

Requiring poultry meat or poultry meat products in these circumstances to meet the requirements of the Poultry Rules would be redundant and excessively burdensome as the goods are intended to be consumed and not enter another country or to be re-exported in the same condition in which they entered Australia.

The note following section 2-2 explains that a resource industry structure that is not installed is taken to be a vessel in accordance with the *Sea Installations Act 1987*.

Division 2—Prohibited export and prescribed export conditions

Division 2 of Part 1 of Chapter 2 of the Poultry Rules sets out specific requirements that must be complied with when exporting prescribed poultry meat or poultry meat products (prescribed export conditions). The purpose of the prescribed export conditions is to ensure that prescribed poultry meat or poultry meat products are exported in accordance with the requirements in the Act and the Poultry Rules. Division 2 provides that the export of prescribed goods is prohibited unless prescribed conditions are complied with.

2-3 Purpose and application of this Division

Subsections 2-3(1) and (2) provide that Division 2 of Part 1 of Chapter 2 of the Poultry Rules is made for the purposes of section 29 of the Act and that it applies to prescribed poultry meat and poultry meat products (as prescribed under section 2-1).

The first note following subsection 2-3(1) refers the reader to Division 1 of Part 1 of Chapter 2 of the Poultry Rules for what goods are prescribed poultry meat or poultry meat products.

The second note following subsection 2-3(1) notifies the reader to that, under section 2-2, poultry meat and poultry meat products are taken not be prescribed goods in certain circumstances. The note also refers to the definition of *prescribed goods* in section 12 of the Act.

Subsection 2-3(3) provides that a provision of Division 2 does not apply to prescribed poultry meat or poultry meat products which are to be exported in circumstances referred to in subsection 52(1) or (3) of the Act (for example a commercial sample) and for which an exemption from that provision is in force in relation to the prescribed poultry meat or poultry meat products.

This acknowledges that Part 2 of Chapter 2 of the Act allows a person to apply for and be granted an exemption from one or more provisions of the Act in the circumstances listed in section 52 of the Act. For instance, a person may be granted an exemption from having to comply with one or more of the prescribed export conditions in relation to the export of prescribed poultry meat or poultry meat products for experimental purposes.

2-4 Export of prescribed poultry meat or poultry meat products is prohibited unless prescribed conditions are complied with

Section 29(1)(a) of the Act allows the rules to prohibit the export of prescribed goods from Australian territory or from a part of Australian territory unless the conditions prescribed by the rules are complied with.

Section 2-4 lists the prescribed export conditions that must be complied with for the export of prescribed poultry meat or prescribed poultry meat products from Australian territory. The export of prescribed poultry meat or poultry meat products is prohibited unless these conditions are met. These conditions are necessary to enable and maintain market access for goods exported from Australian territory and to ensure compliance with government and industry standards. The prescribed export conditions maintain the integrity of our exports, Australia's positive relationships with trading partners and our reputation as a reliable exporter of safe and high-quality products.

The prescribed export conditions that apply to the export of prescribed poultry meat or poultry meat products are:

- that all importing country requirements relating to the poultry meat or poultry meat products, and the operations to prepare them for export, must be met; and
- that the operations to prepare the poultry meat or poultry meat products for export must be carried out at an establishment that is registered for those operations in relation to the poultry meat or poultry meat products, and that the registration is not suspended in relation to those operations; and
- that an approved arrangement covering operations to prepare the poultry meat or poultry meat products for export at the registered establishment must be in force and not suspended at the time the operations are carried out; and
- that, for each consignment of poultry meat or poultry meat products to be exported, a person prescribed by section 8-2 (the person who intends to export the consignment) has given the Secretary, at the time prescribed by section 8-4 (as soon as reasonably practicable) a notice of intention to export the consignment; and
- that, at the time of the export, the exporter holds an export permit for the poultry meat or poultry meat product that is in force and not suspended.

For each export of prescribed poultry meat or poultry meat products, all prescribed export conditions must be complied with.

The first note following section 2-4 alerts the reader that additional conditions may also apply to the export of particular prescribed poultry meat or poultry meat products that also fit within other regimes, such as particular poultry products that are also covered by the *Export Control (Organic Goods) Rules 2021*.

The second note following section 2-4 alerts the reader that a person may commit an offence or be liable to a civil penalty if prescribed goods are exported in contravention of prescribed export conditions (see Division 4 of Part 1 of Chapter 2 of the Act).

The third note following section 2-4 explains that the occupier of a registered establishment may commit an offence or be liable to a civil penalty if export operations are carried out while the registration is suspended (see section 136 of the Act).

The fourth note following section 2-4 explains that the holder of an approved arrangement may commit an offence or be liable to a civil penalty if export operations are carried out while the arrangement is suspended (see section 177 of the Act).

The fifth note following section 2-4 clarifies that while a suspended export permit remains in force, it does not authorise the export of goods while suspended (subsection 232(2) of the Act).

Part 2—Exemptions

Part 2 of Chapter 2 of the Poultry Rules sets out matters relating to exemptions from one or more provisions in the Act in relation to prescribed poultry meat or poultry meat products.

Under the Act, an exemption from one or more requirements of the Act (including prescribed export conditions) may be granted following an individual application in certain circumstances, rather than in relation to all poultry meat or poultry meat products of a particular kind or exported to a particular country. This is to enable a reduced level of regulatory oversight in circumstances where there is minimal risk to food safety and human and animal health while ensuring importing country requirements are met.

2-5 Application of this Part

Section 2-5 provides that Part 2 of Chapter 2 of the Poultry Rules applies only in relation to prescribed poultry meat or poultry meat products, which are called ***relevant goods*** in this Part.

The first note following section 2-5 draw the reader's attention to Division 1 of Part 1 of Chapter 1 of the Poultry Rules, which sets out what goods are prescribed poultry meat or poultry meat products.

The second note following section 2-5 alerts the reader to the fact that, under subsection 2-2, poultry meat and poultry meat products are taken not be prescribed goods in the specified circumstances.

2-6 Period for making application for exemption

Subparagraph 53(3)(f)(i) of the Act allows the rules to prescribe the period within which an application for an exemption from one or more provisions of the Act may be made.

Section 2-6 is made for the purposes of subparagraph 53(3)(f)(i) of the Act and prescribes the timeframe in which an application for an exemption from one or more provisions in the Act must be made in relation to relevant goods. This period is 120 days ending on the day that is 10 business days before either the proposed date of export of the relevant goods (if operations to prepare the relevant goods for export have started), or the proposed date to start carrying out those operations. The timeframe is to ensure the Secretary has a reasonable amount of time to assess applications for exemption prior to the export of the prescribed poultry meat or poultry meat products.

The first note following section 2-6 refers the reader to subparagraph 53(3)(f)(ii) of the Act, which allows the Secretary to allow a different period in which the application may be made in an individual case.

The second note following section 2-6 explains that an application for an exemption must comply with the requirements in subsection 53(3) of the Act.

2-7 Conditions of exemption—matters to which Secretary must have regard

Section 55 of the Act allows the Secretary to impose conditions on an exemption. When deciding whether to impose a condition on an exemption, the Secretary is required to have regard to the matters prescribed by the rules (subsection 55(2)).

Section 2-7 is made for the purposes of subsection 55(2) of the Act and requires the Secretary, in deciding whether it is necessary to impose conditions on an exemption that relates to prescribed poultry meat or poultry meat products, to consider whether imposing the condition would ensure that one or more objects of the Act will be met in relation to the goods.

This requirement is intended to ensure that exemptions are approved in circumstances where the objects of the Act are met and goods exported from Australia are of the highest standard, maintaining Australia's reputation as a trading partner.

2-8 Period of effect of exemption

Paragraph 57(b) of the Act allows the rules to prescribe the period that an exemption remains in force unless it is revoked earlier.

Section 2-8 is made for the purposes of paragraph 57(b) of the Act and provides that an exemption that relates to prescribed poultry meat or poultry meat products remains in force for 12 months starting on the day the exemption takes effect, or another period specified in the instrument of exemption. The Secretary will have the discretion to determine the appropriate period. It may be appropriate that some exemptions remain in force for different periods. This will provide the necessary flexibility to deal with changing circumstances for regulating prescribed goods.

The note following section 2-8 explains that, under paragraph 57(a) of the Act, an exemption takes effect on the date specified in the instrument of exemption under paragraph 56(1)(e).

2-9 Variation of conditions of exemption—matters to which Secretary must have regard

Section 58 of the Act allows the Secretary to vary the conditions imposed on an exemption that is in force. When deciding whether it is necessary to vary a condition on an exemption, the Secretary is required to have regard to the matters prescribed by the rules (subsection 58(3)).

Section 2-9 is made for the purposes of subsection 58(3) of the Act and requires the Secretary, in deciding whether it is necessary to vary conditions on an exemption that relates to prescribed poultry meat or poultry meat products, to consider whether varying the condition would ensure one or more objects of the Act will be met in relation to the goods.

This requirement is intended to ensure that exemptions are only approved in circumstances where the objects of the Act are met and goods exported from Australia are of the highest standard, strengthening Australia's reputation as a trading partner.

2-10 Revocation of exemption—matter to which Secretary must have regard

Section 59 of the Act allows the Secretary to revoke an exemption that is in force. In considering whether to revoke an exemption, the Secretary is required to have regard to the matters prescribed by the rules (subsection 59(2)).

Section 2-10 prescribes, for the purposes of subsection 59(2) of the Act, the matters to which the Secretary must have regard in considering whether to revoke an exemption. The Secretary must consider whether the conditions of the exemption have been, or are being, complied with.

Part 3—Government certificates

Part 3 of Chapter 2 of the Act provides for government certificates to be issued for goods that are to be exported or have been exported. Part 3 of Chapter 2 of the Poultry Rules sets out specific requirements relating to the issue of government certificates for poultry meat and poultry meat products that are to be or have been exported.

A government certificate is an official document containing details about the product being exported. The purpose of the government certificate is to confirm to importing country authorities that the poultry or poultry meat products have met specified requirements of that country. Government certificates may be issued electronically, providing an efficient means of facilitating trade.

2-11 When government certificate may be issued in relation to poultry meat or poultry meat products

Section 62 of the Act allows the rules to make provision for and in relation to the issue of government certificates in relation to goods that are to be, or that have been, exported.

Section 2-11 is made for the purposes of subsections 62(1) and (2) of the Act and sets out when government certificates may be issued for poultry meat and poultry meat products that will be, or have been, exported. A certificate can be issued for any poultry meat or poultry meat products, whether they are prescribed or non-prescribed goods, so long as the goods are intended for export, or have been exported.

2-12 Declaration to accompany application for government certificate

Section 65 of the Act sets out the requirements for an application for a government certificate in relation to a kind of goods that are to be, or that have been, exported and requires an applicant to provide certain information. Paragraph 65(2)(d) of the Act allows the rules to specify documents that must accompany an application for a government certificate.

Subsection 2-12(1) is made for the purposes of paragraph 65(2)(d) of the Act and provides that, if a government certificate in relation to poultry meat or poultry meat products is required to meet importing country requirements, the application for the certificate must include a declaration stating that the importing country requirements relating to the poultry meat or poultry meat products have been, or will be, met before the products are imported into the importing country.

The first note following subsection 2-12(1) refers the reader to the *Electronic Transactions Act 1999* for requirements for electronic communications (including declarations).

The second following subsection 2-12(1) note refers the reader to section 11-4 of the Poultry Rules, which requires a government certificate to be retained in a secure place, unless it was issued by electronic means.

Subsections 2-12(2) and (3) have the combined effect that the declaration must:

- be in a form approved by the Secretary;
- not be made if there are no reasonable grounds for making it;
- not be false or misleading; and
- be signed and dated by the person making the declaration.

This ensures the declaration contains relevant information to enable the issuing body to make an informed decision on issuing the government certificate.

The note following subsection 2-12(3) alerts the reader that a person may commit an offence or be liable to a civil penalty if the person provides false or misleading information or documents (see sections 127.1 and 137.2 of the *Criminal Code Act 1995* and sections 368 and 369 of the Act).

2-13 Circumstances for refusing to issue government certificate

Section 67 of the Act requires the issuing body, on receiving an application for a government certificate in relation to a kind of goods, to decide to either issue the certificate or refuse to issue the certificate. The issuing body may refuse to issue the certificate if one or more of the grounds in subsection 67(3) of the Act are met. Paragraph 67(3)(g) of the Act allows the rules to prescribe additional grounds to refuse to issue a government certificate.

Subsection 2-13(1) sets out, for the purposes of paragraph 67(3)(g) of the Act, additional circumstances for an issuing body to refuse to issue a government certificate in relation to poultry meat and poultry meat products. These additional provisions are necessary to protect Australia's trade reputation and ensures Australia complies with international obligations and sanitary matters relating to food safety, animal health or human health. The circumstances for refusing to issue a certificate are:

- if a condition or disease that is present in Australian territory is likely to affect whether the importing country will accept the poultry meat or poultry meat products to the importing country.
- if the export of the poultry meat or poultry meat products could adversely affect trade;
- if the applicant failed to return a government certificate as required, to retain a government certificate in a secure place, or failed to provide facilities and assistance to an auditor as required by section 271 of the Act.

These grounds ensure that government certificates are not issued for poultry meat or poultry meat products that could cause harm to Australia's trade reputation.

Subsection 2-13(2) sets out circumstances, without limiting subsection 2-13(1), where an issuing body may refuse to issue a government certificate in relation to prescribed poultry meat or poultry meat products. The additional circumstances are where:

- a prescribed export condition that applies in relation to the poultry meat or poultry meat products has not been complied with;
- an applicant has failed to comply with a direction under subsection 305(1) of the Act to deal with non-compliance;
- an export permit is not in force for the prescribed poultry meat or poultry meat products.

The purpose of this subsection is to ensure that a government certificate may be refused if there has not been compliance with the regulatory controls in the Act for prescribed goods.

The note following section 2-13 explains that paragraphs 67(3)(a) to (f) of the Act set out other grounds for the refusal of a government certificate.

2-14 Changes that require holder of certificate to give additional or corrected information to the issuing body

Subsection 74(2) of the Act requires the holder of a government certificate to provide certain additional or corrected information to the issuing body if the holder becomes aware that information included in the application (or other document provided to the issuing body) was incorrect or incomplete (paragraph 74(1)(a)), or if a change prescribed by the rules occurs (paragraph 74(1)(b)).

Section 2-14 is made for the purposes of paragraph 74(1)(b) of the Act and has the effect that the holder of the government certificate must provide the issuing body with relevant additional or corrected information in certain circumstances. These circumstances are where there are reasonable grounds to suspect that:

- the integrity of the poultry meat or poultry meat products cannot be ensured; or
- an importing country requirement relating to the poultry meat or poultry meat products will not be or is not likely to be, met before the poultry meat or poultry meat products are imported into the importing country; or
- for prescribed poultry meat or poultry meat products only – a prescribed export condition relating to the poultry meat or poultry meat products has not been complied with in circumstances where the condition should have been complied with.

The purpose of this provision is to place an obligation on the holder of the government certificate to monitor the goods (to the extent it is reasonable to do so) to ensure the

government certificate continues to accurately reflect the circumstances for the issue of the certificate, and to inform the issuing body when the relevant circumstances change.

This will allow the issuing body to consider whether one or more of the grounds to revoke the government certificate (under section 75 of the Act) are met in light of the changed circumstances, and ensures government certificates are only provided where the goods are supplied in compliance with the Act and the Poultry Rules, enhancing Australia's reputation as a reliable trading partner.

2-15 Return of government certificate

Subsection 76(1) of the Act allows the rules to require a person who is in possession of a government certificate that was issued to the person to return the certificate to the issuing body in the circumstances (paragraph 76(1)(a)), and timeframe (paragraph 76(1)(b), required by the rules.

Subsection 2-15(1) is made for the purposes of paragraph 76(1)(a) of the Act and requires a government certificate to be returned to an issuing body if the poultry meat or poultry meat products are no longer intended for export to the country for which the government certificate was issued, or where the certificate has been revoked under section 75 of the Act. The purpose of this requirement is to ensure that government certificates are not misused by placing an obligation on the holder to return the certificate where the poultry meat or poultry meat products are no longer intended for export, or where the certificate has been revoked.

Subsection 2-15(2) is made for the purposes of paragraph 76(1)(b) of the Act and provides that a government certificate must be returned within 10 business days starting on the day the circumstance listed in subsection 2-15(1) of the Poultry Rules occurs. Ten business days is a reasonable timeframe for the holder to return the certificate to the issuing body but is short enough to mitigate against the risk that the certificate would be misused.

Subsection 2-15(3) provides that the requirement in section 2-15 to return the government certificate does not apply to a government certificate that was issued electronically, as there will not necessarily be a physical certificate to return.

Failure to comply with the requirement to return a government certificate in the circumstances set out in section 2-15 will be a contravention of a civil penalty provision (subsection 76(2) of the Act).

CHAPTER 4—REGISTERED ESTABLISHMENTS

Chapter 4 sets out matters relating to registered establishments. The purpose of registering an establishment is to ensure that:

- the facilities and equipment available at the establishment are fit for the purpose of preparing, handling, storing or inspecting product for export;
- appropriate hygiene and the necessary measures to produce the goods according to trade descriptions and other requirements applicable to a given commodity are maintained; and
- the goods comply with importing country requirements.

The Secretary may, on application by the occupier of an establishment, register the establishment for export operations in relation to prescribed poultry meat or poultry meat products. The registration of the establishment is subject to certain conditions.

It is a prescribed export condition that operations to prepare prescribed poultry meat or poultry meat products for export must be carried out at an establishment registered for those operations in relation to poultry meat or poultry meat products (section 2-4).

Part 1—Requirements for registration

4-1 Purpose of this Part

Subsection 112(1) of the Act provides that, on receiving an application under section 111 to register an establishment, the Secretary must decide to register the establishment, or to refuse to register the establishment. Subsection 112(2) sets out the requirements of which the Secretary must be satisfied before deciding to register an establishment, having regard to any matter the Secretary considers relevant. Paragraphs 112(2)(c) and (f) allow additional matters and requirements (respectively) to be prescribed by the rules.

Section 4-1 provides that Part 1 of Chapter 4 of the Poultry Rules (sections 4-1 to 4-8) is made for the purposes of paragraphs 112(2)(c) and (f) of the Act and prescribe additional matters and requirements that must be met for an establishment to be registered for operations to prepare prescribed poultry meat or poultry meat products for export.

This means that the requirements prescribed in sections 4-2 to 4-8 of the Poultry Rules are requirements that the Secretary must be satisfied of prior to registering an establishment for operations to prepare prescribed poultry meat or poultry meat products for export (for the purposes of paragraph 112(2)(f) of the Act). Sections 4-2 to 4-8 are also matters that the Secretary must have regard to when deciding whether the construction of the establishment and its equipment and facilities are suitable for carrying out export operations to prepare prescribed poultry meat or poultry meat products for export (for the purposes of paragraph 112(2)(c) of the Act).

The first note following section 4-1 explains that the requirements under Part 1 of Chapter 4 of the Poultry Rules also apply to an application to renew the registration of an establishment under section 4-16 of the Poultry Rules.

The second following section 4-1 note explains that other requirements under subsection 112(2) of the Act and section 2-4 of the Poultry Rules must also be met before the Secretary can register an establishment, including that an approved arrangement must be in place covering operations to prepare the poultry meat or poultry meat products for export.

4-2 Operations must be carried out in a way that will ensure requirements of the Act are complied with; and

Section 4-2 provides that operations at an establishment to prepare prescribed poultry meat or poultry meat products for export, must be carried out in a way that will ensure the requirements of the Act are complied with.

4-3 Requirements of Australian Poultry Meat Standard must be met

Sections 4-3 has the effect that, before registering an establishment for operations to prepare prescribed poultry meat or poultry meat products for export, the Secretary must be satisfied that the requirements of the Australian Poultry Meat Standard, as modified by the Poultry Rules, will be met in relation to such operations.

By using the same Standard for all poultry related goods, regardless of whether they are intended for domestic consumption or export, producers can operate one system of processing at registered establishments. The purpose is to support Australian businesses by keeping the cost of doing business to a minimum while ensuring that Australian exports are of a high quality.

The note following section 4-3 refers the reader to Division 2 of Part 2 of Chapter 1 of the Poultry Rules for modifications of the Australian Poultry Meat Standard.

4-4 Equipment, facilities and essential services

Section 4-4 details the equipment, facilities and essential services required by establishments prior to registration for operations to prepare prescribed poultry meat or poultry meat products for export.

Subsection 4-4(1) requires an establishment to have the buildings, equipment, facilities and essential services to ensure that operations to prepare prescribed poultry meat and poultry meat products intended for export can be carried out in accordance with the requirements of the Poultry Rules. This subsection also requires establishments to have accurate measuring devices to assess compliance with those requirements. This ensures only those establishments that operate safely and hygienically are eligible for registration. These requirements must continue to be met once the establishment is registered (see section 4-10 of the Poultry Rules). It is important for businesses to continue to operate out of approved premises with appropriate facilities to ensure the health and safety of workers and wholesomeness of the export goods.

The note following section 4-4(1) provides further guidance on where to find information on Australian legal units of measurements and tolerances, drawing attention to section 13 of the *National Measurement Act 1960*.

Subsection 4-4(2) contains a specific requirement for an establishment to have toilet facilities. This requirement makes sure that suitable facilities are made available to ensure the health and welfare of employees within the registered establishment.

The note following subsection 4-4(2) alerts the reader to the requirement in subsections 4-8(1) and (2) that if there is a permanent position for one or more Commonwealth authorised officers at the establishment, there must be a toilet room for the exclusive use of those authorised officers.

4-5 Areas where post-mortem inspections are carried out

Section 4-5 requires an establishment to have an area for post-mortem inspections of carcasses or carcase parts to be carried out by authorised officers. This area must not be encroached upon by equipment or persons other than authorised officers carrying out the inspections.

4-6 Meat examination facility

Section 4-6 details requirements for a meat examination facility for the purposes of registration of an establishment for operations to prepare prescribed poultry meat or poultry meat products for export.

Subsection 4-6(1) provides that the establishment must have a meat examination facility that is:

- within a refrigerated area; and
- maintained at a temperature no warmer than 10 degrees Celsius during export operations; and
- set up to ensure that authorised officers can perform functions unimpeded; and
- able to be secured (for example, by key or electronic means).

This guarantees satisfactory facilities for authorised officers to undertake their duties and the storage of prescribed poultry meat or poultry meat products in accordance with the Poultry Rules.

Subsection 4-6(2) requires that authorised officers who need to perform functions in the meat examination facility are given sufficient access to the facility to enable them to perform their functions unimpeded, but the facility need not be for their exclusive use.

4-7 Secure storage area

Section 4-7 requires an establishment where prescribed poultry meat or poultry meat products are loaded for export to have an area where all products required to be held can be securely stored. The secure storage area must:

- be separate from other parts of the establishment; and
- able to be secured (for example by key or electronic means); and
- be constructed and used in a way that does not jeopardise the security of, or affect the ability to ensure integrity of, prescribed poultry meat or poultry products held in the area.

This is to ensure the security and integrity of poultry meat and poultry meat products while they are held in storage prior to loading or when waiting for the next processing stage.

4-8 Amenities for Commonwealth authorised officers

Subsections 4-8(1), (2) and (3) detail the amenities which must be provided at an establishment where there is a permanent position for one or more Commonwealth authorised officers. The amenities that must be provided are:

- an office (which meets the requirements of subsection 4-8(3);
- a dining room;
- a change room;
- a shower room;
- a toilet room; and
- a rest room where amenities are provided for female authorised officers.

The required amenities must be:

- kept separate from the amenities provided for employees;
- suitable and suitably and conveniently located; and
- for the exclusive use of Commonwealth authorised officers.

The office must be equipped with:

- a telephone;
- a connection to a computer terminal;
- a lockable metal cabinet;
- a desk, chair and locker for each Commonwealth authorised officer requiring the use of the office; and
- hand washing and drying facilities if they are not conveniently located nearby.

These subsections guarantee the availability of satisfactory facilities for officers who are authorised by the Commonwealth to carry out functions or duties at the establishment. It is appropriate for the minimum standards to be set out in the rules as the Commonwealth does not have any involvement in managing the building contracts or facilities. This ensures the safety and welfare of the authorised officers and assists prospective occupiers to know what to look for prior to securing an establishment.

Commonwealth authorised officers are accountable for a range of decisions under the Act. This includes decisions that affect the whole, or a substantial part of an establishment. These requirements create a clear distinction between authorised officers and employees at the establishment, minimising the potential exposure to risks or influence from employees in relation to the quality of exported goods.

Subsections 4-8(4) and (5) provide that any other establishment (i.e. where there is no permanent position for Commonwealth authorised officers) must provide an office for the exclusive use of Commonwealth authorised officers to perform functions when they are at the establishment. This requirement guarantees appropriate working conditions are available for Commonwealth authorised officers to perform their official functions.

Subsection 4-8(6) provides that, for the avoidance of doubt, section 4-8 applies in addition to sections 4-4 to 4-7, which require establishments to have specific facilities and equipment.

Part 2—Conditions of registration

4-9 Purpose of this Part

Section 113 of the Act sets out the conditions that apply to the registration of an establishment. This includes the conditions prescribed by the rules made for the purposes of paragraph 113(1)(b) (other than any of those conditions that the Secretary decides are not to be conditions of the registration).

Section 4-9 provides that Part 2 of Chapter 4 of the Poultry Rules (sections 4-9 to 4-14) prescribes, for the purposes of paragraph 113(1)(b) of the Act, conditions for the registration of an establishment for operations to prepare prescribed poultry meat and poultry meat products for export.

The first note following section 4-9 explains that the conditions in Part 2 of Chapter 4 of the Poultry Rules also apply in relation to the registration of an establishment that has been renewed, as per paragraph 118(b) of the Act.

The second note following section 4-9 alerts the reader that the occupier of a registered establishment may commit an offence or be liable to a civil penalty for the contravention of conditions of registration for the establishment. Failure to comply with the provisions of this Part may result in contravention of section 144 of the Act.

4-10 Requirements for registration continue to be met

Section 4-10 provides that requirements for the registration of an establishment for operations to prepare prescribed poultry meat and poultry meat products for export prescribed by Part 1 of Chapter 4 of the Poultry Rules must continue to be met after the establishment is registered.

This is to prevent registered establishments from meeting the requirements of Part 1 of Chapter 4 of the Poultry Rules to gain registration and later altering their building facilities and amenities in a way that results in the requirements no longer being met. It is important for businesses to continue to operate out of approved premises with appropriate facilities to ensure the health and safety of workers and wholesomeness of the export goods.

The note following section 4-10 refers the reader to sections 4-2 to 4-7 (for requirements relating to establishments) and 4-8 (for specific requirements relating to establishments where authorised officers perform functions).

4-11 Certificate of registration must be displayed

Section 4-11 requires a copy of the current certificate of registration for an establishment for operations to prepare prescribed poultry meat and poultry meat products for export to be prominently displayed at the establishment. This requirement can, for example, assist regulators when conducting an audit of the establishment.

4-12 Notice of certain matters must be given to persons who manage or control export operations at registered establishment

Subsection 4-12(1) provides that an occupier of a registered establishment for operations to prepare prescribed poultry meat or poultry meat products must give a written notice to each person who manages or controls export operations. The notice must:

- set out the terms of section 374 of the Act (requiring a person to notify the Secretary of certain convictions or orders to pay a pecuniary penalty); and
- state that failure to comply with section 374 may result in civil penalties.

Subsection 4-12(2) details timeframes for giving the required written notice. The notice must be given to each person:

- as soon as practicable after the occupier receives the certificate of registration for the establishment; or
- as soon as practicable after the person starts to manage or control export operations (if that occurs after the occupier receives the certificate of registration).

These provisions ensure persons to which the obligations relate are aware of the requirements and consequences of non-compliance. This provides assurance that each person who manages or controls export operations is aware of their obligations under the Act.

4-13 List of persons who manage or control export operations at registered establishment

Section 4-13 provides that the occupier of a registered establishment has an obligation to keep and maintain a list of persons who manage or control, or who have managed and controlled, operations to prepare prescribed poultry meat or poultry meat products for export at the establishment.

This section facilitates audits of registered establishments to ensure that auditors are aware of those who manage, or control, export operations at the establishment.

4-14 Meat inspection services

Section 4-14 sets out the obligations on the occupier of a registered establishment for operations to prepare prescribed poultry meat and poultry meat products for export that apply to meat inspection service allocations.

Subsection 4-14(1) provides that section 4-14 applies if an approved arrangement for operations to prepare prescribed poultry meat or poultry meat products for export at a registered establishment requires, or is subject to a condition that requires, an authorised officer to be present at the establishment while operations of that kind are being carried out.

Subsection 4-14(2) requires the occupier of the registered establishment to have a preliminary allocation of meat inspection services for the establishment before commencing operations to prepare prescribed poultry meat or poultry meat products for export.

This is the initial allocation of authorised officers to a registered establishment for the purposes of meat inspection services which include inspecting prescribed poultry meat and poultry meat products, and other ancillary meat inspection services. This subsection:

- ensures there is sufficient time to allocate authorised officers to the registered establishment prior to the commencement of operations;
- does not delay the commencement of operations; and

- ensures that prescribed poultry meat or poultry meat products prepared at registered establishments are processed and assessed in compliance with the Act and the Poultry Rules.

The note following subsection 4-14(2) refers the reader to Division 1 of Part 6 of Chapter 4 of the Poultry Rules, which deals with applications for the allocation of meat inspection services to be allocated to an establishment.

Subsection 4-14(3) applies if inspection services have been allocated to the registered establishment. The occupier of the establishment must, as soon as practicable, notify the Secretary in writing of any proposed changes to the construction of the establishment, or the operations that may be carried out at the establishment, that may affect the allocation of meat inspection services.

This ensures the Secretary is aware of information that may indicate it is appropriate for the Secretary to revise the allocation of inspection services to meet the new operational requirements. This could result in an increase or decrease in the allocation of inspection services.

The note following subsection 4-14(3) explains that certain alterations of registered establishments require approval under the Act (see paragraph 120(1)(b) and section 122 of the Act).

Part 3—Renewal of registration

4-15 Period within which application to renew registration must be made

Section 116 of the Act deals with applications to renew the registration of an establishment. Subsection 116(4) provides that an application for renewal must be made within the period prescribed by the rules (paragraph 116(4)(a)), or a longer period allowed by the Secretary (paragraph 116(4)(b)).

Section 4-15 prescribes, for the purposes of paragraph 116(4)(a) of the Act, the timeframe in which an application to renew the registration of an establishment for operations to prepare prescribed poultry meat and poultry meat products for export must be made. This timeframe is 60 days starting on the day that is 180 days before the expiry date for the registration. In other words, the application must be submitted when the registration is between 180 days and 120 days from expiring. This period allows the Secretary sufficient time to consider the application before a decision is made.

The first note following section 4-15 gives an example that if the registration expires on 8 July in a year (other than a leap year), an application for renewal can be made in any time between 9 January and 10 March in that year.

The second note following section 4-15 explains that, under subsection 116(1) of the Act, an application for renewal of the registration of an establishment will only need to be made if there is an expiry date for the registration.

4-16 Requirements for renewal of registration

Subsection 117(1) of the Act provides that, on receiving an application under section 116 to renew the registration of an establishment, the Secretary must decide to renew the registration or to refuse to renew the registration. Subsection 117(2) sets out the requirements of which the Secretary must be satisfied before deciding to refuse to renew the registration, having regard to any matter the Secretary considers relevant. Paragraphs 117(2)(e) and (g) allow additional matters and requirements (respectively) to be prescribed by the rules.

Section 4-16 prescribes, for the purposes of paragraphs 117(2)(e) and (g) of the Act, additional requirements of which the Secretary must be satisfied before refusing renewal of the registration of an establishment for operations to prepare prescribed poultry meat and poultry meat products (in addition to the existing requirements in subsection 117(2) of the Act). The Secretary may refuse an application for renewal of registration of an establishment for operations to prepare prescribed poultry meat or poultry meat products if not satisfied the requirements set out in Part 1 of Chapter 4 of the Poultry Rules (sections 4-1 to 4-8), which relate to the requirements for registered establishments for operations to prepare prescribed poultry meat and poultry meat products, have been met.

The requirements for renewing a registration are the same as those for registering an establishment. This ensures registered establishments continue to operate in the manner approved by the Secretary. This will prevent registered establishments from merely meeting the requirements at the initial application phase and later reverting to unsatisfactory practices.

The note following section 4-16 refers the reader to the other requirements for renewal of registration of an establishment in paragraphs 117(2)(a) to (d) of the Act, and also notes that an approved arrangement covering operations to prepare the poultry meat or poultry meat products for export must also be in force.

Part 4—Variation of registration

4-17 – Alterations for which approval is not required

Subsection 122(1) of the Act provides that certain alterations of a registered establishment must not be made unless approved by the Secretary and notice has been given to the occupier. Subsection 122(2) of the Act allows the rules to prescribe alterations to a registered establishment that do not require approval.

Section 4-17 is made for the purposes of subsection 122(2) of the Act and prescribes alterations to a registered establishment that do not require approval are alterations that do not affect compliance with other conditions of registration of the establishment.

Part 5—Matters relating to applications

4-18 Application of this Part

Section 4-18 provides that Part 5 of Chapter 4 of the Poultry Rules (sections 4-18 to 4-20) applies in relation to applications made under the following:

- section 111 of the Act to register an establishment for operations to prepare prescribed poultry meat or poultry meat products for export;

- section 116 of the Act to renew the registration of an establishment for operations to prepare prescribed poultry meat or poultry meat products for export; and
- section 120 of the Act to do any of the following in relation to an establishment that is registered for operations to prepare prescribed poultry meat or poultry meat products for export:
 - vary the registration, or particulars relating to the registration of the establishment;
 - approve an alteration of an establishment; or
 - vary the conditions of the registration of an establishment.

4-19 Initial consideration period

Section 379 of the Act details the requirements for dealing with applications made under the Act. Subsection 379(3) allows the rules to prescribe the period in which an application must be considered by the Secretary. If the Secretary does not make a decision on the application within the prescribed consideration period, the application is taken to have been refused.

Section 4-19 is made for the purposes of subsection 379(3) of the Act and prescribes an initial consideration period of 120 days. The period of 120 days is appropriate, having regard to the matters the Secretary must consider in granting or refusing an application. The initial consideration period may be extended in accordance with subsection 379(5) of the Act.

The note following section 4-19 explains that under subsection 379(4) of the Act, the consideration period for an application starts on the day after the Secretary receives the application.

4-20 Period within which request relating to application must be complied with

Subsection 379(9) of the Act allows the Secretary to make a number of requests in relation to a relevant application, including requesting additional information or requesting consent to enter premises. Subsection 379(10) allows the rules to prescribe a maximum period within which the request must be complied with.

Section 4-21 prescribes, for the purposes of subparagraph 379(10)(b) of the Act, a period of 6 months within which a request from the Secretary in relation to an application to register an establishment must be complied with. The initial consideration period can be extended under section 379 of the Act. The period prescribed by this section is appropriate as it permits sufficient time to comply with matters provided in subsection 379(9) of the Act. The period provides certainty for applicants on the maximum amount of time required for an application to be processed.

Part 6—Meat inspection services

Division 1—Allocation of meat inspection services

Division 1 of Part 6 of Chapter 4 of the Poultry Rules (sections 4-21 to 4-28) relates to the allocation of suitably qualified authorised persons to provide services related to the inspection of prescribed poultry meat or poultry meat products for export.

4-21 Application for allocation of meat inspection services to establishment

Subsection 4-14(2) of the Poultry Rules makes it a condition of registration of an establishment for operations to prepare prescribed poultry meat or poultry meat products to have a preliminary allocation of meat inspection services for the establishment prior to commencing operations.

Section 4-21 sets out when and how an application for preliminary allocation of meat inspection services may be made.

Subsection 4-21(1) provides that an occupier of an establishment carrying out operations to prepare prescribed poultry meat or poultry meat products for export may apply to the Secretary for a preliminary allocation of meat inspection services.

The first note following subsection 4-21(1) refers the reader to the condition of registration at section 4-14 of the Poultry Rules.

The second note following subsection 4-20(1) refers the reader to section 12 of the Act for the definition of *establishment* and to section 1-5 of the Poultry Rules for the definition of *registered establishment*.

Subsection 4-21(2) details specific requirements for making an application for allocation of meat inspection services to an establishment. The application must:

- be made in writing in an approved manner or on an approved form (if a manner or form has been approved);
- contain or be accompanied by any information and documents required by the approved form;
- be made within 90 days before operations to prepare prescribed poultry meat and product meat product for export at the establishment are to commence;
- set out the details of the intended operations including the months, weeks, days, and hours the operations are intended to be carried out, the number of chains at the establishment, and the number of chains and chain speed for each type of poultry from which prescribed poultry meat or poultry meat products are to be derived.

The note following subsection 4-21(2) provides examples of types of poultry are fowl, ducks, geese, turkeys and pigeons.

The timeframe for making an application ensures business operations are not delayed by allocation of inspection services. This section ensures applications for the allocation of meat inspection services contain the information necessary for the Secretary to decide the number of authorised officers required to ensure satisfactory assessment of prescribed poultry meat or poultry meat products for export.

The details for the intended operations ensure prescribed poultry meat or poultry meat products are moved through the registered establishment in a way that allows the approved meat inspectors to thoroughly inspect the product and assess the compliance of the product with the Act and the Poultry Rules for export.

Subsection 4-21(3) provides that an application is taken not to have been made if the application does not comply with the requirements under subsection 4-21(2) of the Poultry Rules. This is to ensure all relevant information is included and allows a timely decision to be made by the Secretary.

4-22 Preliminary allocation

Section 4-22 sets out the matters the Secretary must consider in determining the preliminary allocation of meat inspection services for a registered establishment preparing poultry meat or poultry meat products for export.

The registered establishment must have a preliminary allocation of meat inspection services before commencing operations to prepare prescribed poultry meat or poultry meat products for export. Authorised officers work closely with registered establishments to provide independent control of prescribed poultry meat or poultry meat products to ensure compliance with the Act and the Poultry Rules, and to allow uninterrupted market access for products exported from Australian territory.

Subsection 4-22(1) provides that the Secretary must, as soon as practicable after receiving an application under subsection 4-21(1) for meat inspection services to be allocated to an establishment, determine the preliminary allocation of meat inspection services to the establishment, which may be zero. This ensures occupiers have certainty around the allocation of authorised officers at the earliest point possible and will allow industry to determine the cost and pace at which it can manage its export operations in compliance with the Act and the Poultry Rules.

Subsection 4-22(2) requires the Secretary to consider a number of matters in determining the allocation of meat inspection services to an establishment. The Secretary must have regard to:

- the overall requirements of the industry for meat inspection services;
- Australia's international obligations;
- any staffing formula agreed to by the Department and the relevant union of authorised officers;
- the availability of authorised officers to carry out meat inspection services;
- the management practices at the establishment in relation to meat inspection services;
- the need to protect the health and safety of authorised officers while they are carrying out their duties in or around the establishment; and
- the construction and intended operations of the establishment.

Subsection 4-22(3) permits the Secretary to allocate meat inspection services on an annual, monthly, or weekly basis or any combination of these. This provides flexibility to ensure efficient use of authorised officers and may reduce costs for industry as charges may be reduced through appropriate allocation of authorised officers.

Subsection 4-21(4) provides that meat inspection services (excluding slaughter floor inspection services) may also be allocated on a daily or hourly basis. This provides flexibility and ensures the efficient allocation of authorised officers.

Slaughter floor inspection services are excluded from subsection 4-21(4) to reduce the financial burden on industry and to allow the appropriate allocation of authorised officers' time.

Other meat inspection services may be allocated on a daily or hourly basis to reduce the need to pay for these services on either an annual, monthly, or weekly basis and to ensure the effective use of the authorised officers' time.

The note following section 4-22 refers the reader to the definition of *slaughter floor meat inspection service* in section 1-5 of the Poultry Rules. *Slaughter floor meat inspection service* means a meat inspection service that provides an inspection of carcasses or carcase parts on the slaughter floor of an abattoir.

4-23 Notice of preliminary allocation

Subsection 4-23(1) requires the Secretary to give written notice to the occupier of a registered establishment of the determination relating to the preliminary allocation of meat inspection services to that establishment, as soon as practicable after making the determination. This requirement allows the occupier sufficient time to decide whether they wish to accept or seek review of the initial determination.

Subsection 4-23(2) provides that the notice provided by the Secretary may also include advice on ways the occupier could reduce the allocation of meat inspection services if the Secretary considers it appropriate. This assists industry to reduce unnecessary costs associated with meat inspection services while maintaining sufficient oversight to ensure the health and safety of staff and the hygiene of the goods.

4-24 Procedure following notice of preliminary allocation

The purpose of the sections 4-24 to 4-26 is to detail the procedures that follow the Secretary's notice to the occupier of a registered establishment of the preliminary or revised allocation of meat inspection services at the establishment.

Subsections 4-24(1) and (2) deal with the situation in which the occupier of the establishment accepts the preliminary allocation of meat inspectors determined by the Secretary under section 4-22.

Subsection 4-24(1) requires the occupier of the establishment and the Secretary to complete a memorandum of agreed intent in the form approved by the Secretary.

Subsection 4-24(2) requires that, if no memorandum is completed within 7 days and no application for review or revised allocation is made by the occupier, the Secretary's determination of the preliminary allocation is taken to be a memorandum of agreed intent between the Secretary and the occupier.

Subsection 4-24(3) deals with the situation where the occupier of the establishment does not accept the preliminary allocation of meat inspection services to the establishment. In such circumstances, the occupier may apply to the Secretary for the establishment of a committee to review the Secretary's determination. The application must be made in writing within 7 days after receiving notice of the preliminary allocation.

The note following subsection 4-24(3) refers the reader to section 4-27 in relation to the establishment of a review committee.

4-25 Revised allocation

Section 4-25 applies where the preliminary determination contains advice on ways the occupier could reduce the allocation of meat inspection services, the occupier implements some or all of the advice, and the implementation of the suggestions means the preliminary allocation of meat inspection services should be revised.

In such circumstances, the Secretary must, as soon as practicable, determine a revised allocation of meat inspection services to the establishment and give written notice of the revised allocation to the occupier.

4-26 Procedure following revised allocation

Section 4-26 has the effect that, on the occupier receiving written notice of the revised allocation under section 4-25, the same requirements apply as for the notice of the original preliminary allocation. Namely, the occupier may:

- accept the allocation and complete a memorandum of agreed intent between the Secretary and the occupier; or
- dispute the revised allocation and apply to the Secretary for the establishment of a committee to review the Secretary's determination of the preliminary or revised allocation within 7 days of the notice of the allocation.

If, within 7 days of receiving the notice, a memorandum of agreed intent has not been signed and no review has been sought or a revised allocation made by the Secretary, the determination will be taken to be a memorandum of agreed intent.

The purpose of these provisions is to provide requirements relating to circumstances in which the preliminary allocation is, or is not, accepted by the occupier. Where the occupier does not agree with the allocation request, these provisions ensure an appropriate mechanism to review of the decision.

The note following subsection 4-26(4) refers the reader to section 4-27 of the Poultry Rules in relation to the establishment of a review committee.

4-27 Review of Secretary's determination

Section 4-27 sets out the processes and considerations for the review of preliminary and revised allocation of inspections services determinations for establishments where operations to prepare prescribed poultry meat or poultry meat products for export are to be carried out. Subsections 4-24(3) and 4-26(4) allow the occupier of such an establishment to apply to the Secretary for the establishment of a committee to review the determination if they do not agree with the allocation (or revised allocation) of meat inspection services to the establishment.

Subsection 4-27(1) provides that, where an occupier of an establishment makes an application for review under subsection 4-24(3) or 4-26(4), the Secretary must establish a committee (the *review committee*) comprising:

- the occupier or their representative;
- an SES employee, or acting SES employee, in the Department;
- a poultry meat industry representative nominated by the occupier; and
- if the allocation was not accepted due to a staffing issue, a representative of each relevant union of authorised officers.

To avoid doubt, the occupier may nominate a representative of the occupier and an industry representative. The composition of the committee ensures that its members have the relevant skills and experience to produce an informed recommendation to the Secretary.

Subsection 4-27(2) provides that the Secretary must convene the committee's first meeting. While the Secretary convenes the first meeting, the Secretary is not required to form part of the review committee.

Subsections 4-27(3) and (4) provide requirements for the review process. The review committee must review the application, any advice provided to the occupier under section 4-23 (notice of preliminary allocation) and the determination to which the application relates. The review committee's written recommendation on the appropriate allocation of meat inspection services to the establishment must be provided to the Secretary as soon as practicable and not later than 14 days after its first meeting. This period allows sufficient time for robust discussion among committee members.

4-28 Determination of new allocation

Subsection 4-28(1) provides that as soon as practicable after receiving the recommendation from the review committee under subsection 4-27(4), the Secretary must determine a new allocation of meat inspection services to the establishment.

The note following subsection 4-28(1) explains that the Secretary's determination of a new allocation of meat inspection services is a reviewable decision for the purposes of Part 2 of Chapter 11 of the Act, and that the notice required under subsection 4-28(4) must include the reason for the decision.

Subsection 4-28(2) provides that in making a determination under subsection 4-28(1), the Secretary must have regard to the committee's recommendation and the considerations that must be taken into account when making a determination under subsection 4-22(2).

Subsection 4-28(3) provides that the Secretary's determination of a new allocation of meat inspection services under subsection 4-28(1) replaces any earlier determination and is taken to be a memorandum of agreed intent between the Secretary and the occupier.

Subsections 4-28(4) and (5) provide that the Secretary must give a written notice advising the occupier of the new allocation, as soon as practicable and not later than 45 days after the relevant application for review was received by the Secretary. This timeframe is appropriate as it provides sufficient time for the Secretary to consider the recommendation of the review committee.

The occupier may seek an internal review of a decision made under section 4-28 under section 383 of the Act. Following the internal review, the occupier may apply for external review of the determination by the Administrative Appeals Tribunal unless a determination was made personally by the Secretary (see section 385 of the Act and section 11-1 of the Poultry Rules).

Division 2—Variation of meat inspection services

4-29 Application to vary allocation of meat inspection services

Section 4-29 enables the occupier of a registered establishment where operations to prepare prescribed poultry meat or poultry meat products for export are to be carried out to apply to the Secretary to vary the allocation of meat inspection services to that establishment. This may be where the volume of the goods requiring inspection has been significantly reduced, or the operations have been adjusted to allow inspections to occur at a different interval. This provision enables industry to reduce regulatory costs and allows the redistribution of inspection services.

This section is not intended to apply to applications for additional allocations as this is provided for in section 4-30.

Subsections 4-29(1) and (2) provide that an occupier who has an allocation of meat inspection services may apply to the Secretary in writing to vary that allocation. The application must be made in an approved manner or form (if any) and contain information or documents required by the approved form (if any).

Subsections 4-29(3) and (4) set the timeframes for applying to vary the allocation of meat inspection services. These timeframes are:

- if meat inspection services are allocated on an hourly basis, the application must be made at least 7 days before the requested variation is to start;
- if the meat inspections services are allocated other than on an hourly basis, the application must be made at least 30 days before the requested variation is to start.

The timeframes are appropriate as they allow the Secretary sufficient time to reallocate the inspection services to other establishments.

Subsections 4-29(5) and (6) provide that, on receiving an application under section 4-29, the Secretary must decide to either vary or refuse to vary the allocation of meat inspection services to the establishment. In making this decision, the Secretary must have regard to the matters in subsection 4-22(2) (matters to consider in the preliminary allocation of meat inspection services).

The note following subsection 4-29(5) explains that a decision made to refuse to vary an allocation of inspection services is reviewable, and that reasons must be provided in the notice for such a decision, as per subsection 382(1) of the Act. Providing reasons for the decision may assist the occupier in understanding what they can do to adjust the allocation inspection services.

Subsection 4-29(7) provides that the Secretary must, as soon as practicable after making the decision, give the occupier written notice of the decision under subsection 4-29(5). Under subsection 382(1) of the Act, if the Secretary decides to refuse to allocate the additional inspection services, the Secretary provide details of the right to review of the decision and include reasons for the decision as soon as practicable after making the decision

Subsection 4-29(8) provides that section 4-29 does not apply to a variation relating to additional meat inspection services under section 4-30 or for a shutdown under section 4-31.

4-30 Application for additional allocation of meat inspection services

Section 4-30 provides that the occupier of a registered establishment where operations to prepare prescribed poultry meat or poultry meat products for export are to be carried out may apply to the Secretary for an additional allocation of meat inspection services. This allows occupiers to apply for additional inspection services when they intend to increase their outputs and require more inspection services to do so.

Subsections 4-30(1) and (2) provide that an occupier who has an allocation of meat inspection services may apply to the Secretary in writing for additional meat inspections services to be allocated. The application must be made in the approved manner or form (if any) and contain information or documents required by the form (if any).

Subsections 4-30(3) to (7) detail the additional meat inspections services an occupier may apply for, depending on their existing allocation, and the specified timeframes for making an application:

- if meat inspection services are allocated to a registered establishment on an annual basis, the occupier may apply for additional meat inspection services to be allocated on a monthly or weekly basis;
- if meat inspection services are allocated to a registered establishment on a monthly basis, the occupier may apply for additional meat inspection services to be allocated on a weekly basis;

- if meat inspection services are allocated to a registered establishment on a weekly basis, the occupier may apply for additional meat inspection services to be allocated on a weekly or daily basis;
- if meat inspection services are allocated to a registered establishment on a daily basis, the occupier may apply for additional meat inspection services to be allocated on a daily basis;
- if meat inspection services are allocated to a registered establishment on an hourly basis, the occupier may apply for additional meat inspection services to be allocated on an hourly basis.

The timeframes in which applications must be made are 7 days before the proposed additional meat inspection services are to start for additional allocations on an hourly or daily basis, or 14 days before the proposed additional meat inspection services are to start for additional allocations on a weekly or monthly basis. These timeframes are reasonable as they allow the Secretary to reallocate the inspection services from other establishments.

Subsections 4-30(8) and (9) provide that the Secretary must decide to either grant or refuse to grant the request for additional inspection services. The Secretary must give the occupier written notice of the decision. Under subsection 382(1) of the Act, if the Secretary decides to refuse to allocate the additional inspection services, provide details of the right to review of the decision.

The note following subsection 4-30(8) explains that a decision to refuse a request for additional meat inspection services is a reviewable decision (see section 11-1 of the Poultry Rules and Part 2 of Chapter 11 of the Act). The note also explains that the notice provided under subsection 4-30(9) must also include the reasons for the decision (see subsection 382(1) of the Act).

Subsection 4-30(10) provides that if an application is not made within the timeframes specified in subsections 4-30(3) to (7), the Secretary must make a decision under subsection 4-29(8) as soon as practicable if it is reasonable in the circumstances to do so. This provides the occupier with flexibility to apply for additional allocations services outside of the specified timeframes if necessary.

Subsection 4-30(11) provides that where additional meat inspection services are allocated to a registered establishment under section 4-30, and the application specifies the period during which the additional services are to be provided, the Secretary must not terminate any of the additional services to that establishment until the end of the specified period unless the occupier of the establishment has given notice under section 4-33 that the occupier wishes to terminate some, or all, of the additional meat inspection services.

4-31 Notification that meat inspection services not required during shutdown period

Subsection 4-31(1) provides that the occupier of a registered establishment may notify the Secretary in writing that meat inspection services are not required for a specified continuous period of at least 14 days. This applies if the existing meat inspection services are allocated on an annual basis or on a combination of an annual and other basis. This is to allow

industry to reduce costs by pausing the meat inspection services during the periods where services are not required.

The period of at least 14 continuous days of shut down is appropriate as a lesser period of time could impose an unnecessary administrative burden in relation to reviewing the notice and reallocating the services.

Subsection 4-31(2) provides that the notice must be given at least 14 days before the start of the specified period.

4-32 Variation by Secretary of allocation of meat inspections services

Subsections 4-32(1) and (2) have the combined effect that the Secretary may initiate a variation of the allocation of meat inspection services at a registered establishment in the circumstances specified in paragraph 4-32(1)(a) and (b).

The circumstances specified in paragraph 4-32(1)(a) generally reflect where there has been a change in the matters which the Secretary was required to have regard to when determining the preliminary allocation of meat inspector services to that establishment.

Paragraph 4-32(1)(b) allows the Secretary to initiate a variation of the allocation of meat inspection services to a registered establishment where there has been an audit report that includes a recommendation to vary the allocation of meat inspection services to that establishment for a specified period of time.

It is appropriate for the Secretary to be able to initiate a variation of the allocation in the circumstances listed as these matters generally ensure the inspection of prescribed poultry meat and poultry meat products meet industry and international obligations, facilitate the distribution of authorised officers, and protect the health and safety of workers and the hygiene and wholesomeness of the goods.

Subsection 4-32(3) provides that if the Secretary varies the allocation of meat inspection services to a registered establishment under section 4-32, the Secretary must notify the occupier of the establishment in writing of the variation. The notice must include the varied allocation and, if an audit report recommends that the varied allocation be carried out for a specified period of time, the date the varied allocation ceases to have effect.

The note following subsection 4-32(3) explains that the Secretary may, under section 406 of the Act, direct that meat inspection services are not carried out at a registered establishment if a cost-recovery charge in relation to meat inspection services provided at the establishment remains unpaid after becoming due and payable.

Subsections 4-32(4) to (6) detail what happens when the occupier of a registered establishment does not agree with the Secretary's decision to vary the allocation of meat inspection services to that establishment.

The occupier may apply to the Secretary in writing for reconsideration of the varied allocation. On receiving the application, the Secretary must enter negotiations with the occupier in relation to the varied allocation. If agreement cannot be reached with the occupier, the Secretary must seek to reach agreement with a representative of the relevant industry organisation nominated by the occupier. If agreement cannot be reached with the occupier's representative, the Secretary must determine a new allocation of meat inspection services after having considered the views put forward by the occupier and the occupier's representative.

The note following subsection 4-32(6) explains that a decision to determine a new allocation of meat inspection services to an establishment is a reviewable decision. The notice under paragraph 4-32(7)(b) of the Poultry Rules must include the reasons for the decision.

Subsection 4-32(7) provides that if the Secretary determines a new allocation of meat inspection services to a registered establishment under subsection 4-32(6), the new determination replaces the earlier determination made under subsection 4-32(2), and the earlier determination ceases to have effect. The Secretary must give notice advising the occupier that a new allocation of meat inspection services to the registered establishment has been determined, and the new allocation. The notice must be given as soon as practicable and not later than 45 days after the application for the reconsideration of the allocation was made.

4-33 Notification of termination of meat inspection services

Subsection 4-33(1) provides that the occupier of a registered establishment to which meat inspection services are allocated may notify the Secretary, in writing, that the occupier wishes to terminate some, or all, of the meat inspection services allocated to the establishment (including any additional meat inspection services allocated to the registered establishment under section 4-30 of the Poultry Rules).

Subsection 4-33(2) requires that the notice must be given at least 14 days before the proposed termination of the meat inspection services.

CHAPTER 5—APPROVED ARRANGEMENTS

Part 1—Requirements for approval

The Secretary may, on application by a person, approve a proposed arrangement for a kind of export operations in relation to prescribed poultry meat or poultry meat products. An approved arrangement is subject to certain conditions. Approved arrangements provide the framework for an inspection, verification and certification system. It is a prescribed export condition that prescribed poultry meat and poultry meat products for export are prepared in accordance with an approved arrangement (see section 2-4).

5-1 Purpose of this Part

Subsection 151(1) of the Act provides that, on receiving an application under section 150 of the Act to approve a proposed arrangement, the Secretary must decide to approve the arrangement or refuse to approve the arrangement. Subsection 151(2) sets out the requirements that the Secretary must be satisfied of before approving a proposed arrangement. Paragraph 151(2)(d) allows the rules to prescribe additional requirements that must be satisfied.

Section 5-1 prescribes, for the purposes of paragraph 151(2)(d) of the Act, that Part 1 of Chapter 5 of the Poultry Rules (sections 5-1 and 5-2) prescribes other requirements of which the Secretary must be satisfied before approving a proposed arrangement for export operations in relation to prescribed poultry meat or poultry meat products.

5-2 Other requirements—proposed arrangement for operations to prepare prescribed poultry meat or poultry meat products

Section 5-2 sets out general requirements that must be met for the approval of a proposed arrangement for operations to prepare prescribed poultry meat or poultry meat products for export at a registered establishment. These are necessary to enable the Secretary to determine whether the proposed arrangement meets the requirements of the Act and importing country requirements.

Subsection 5-2(2) requires the proposed arrangement to record that the applicant for approval of the arrangement is committed to both meeting the objects of the Act that are applicable to the operations and to the prescribed poultry meat or poultry meat products to be covered by the arrangement, and complying with the requirements of the Act in relation to those operations.

Subsection 5-2(3) requires the proposed arrangement to cover each stage of the operations.

Subsection 5-2(4) requires the proposed arrangement to record details of:

- the management practices and organisational structure of the applicant;
- the resources and personnel (and the training those personnel receive) to be used to carry out the operations to be covered by the arrangement;
- the system of controls to be implemented to ensure that the conditions of the approved arrangement (set out in Divisions 2 to 8 of Part 1 of Chapter 5 of the Poultry Rules will be complied with;
- any other system of controls to be implemented to ensure that there will be reasonable grounds for issuing an export permit or a government certificate for prescribed poultry meat or poultry meat products to be covered by the arrangement.

Subsection 5-2(5) requires the management practices, organisational structure, resources and personnel (and the training those personnel receive) to be used to carry out the operations to be covered by the arrangement to be appropriate to ensure compliance with the requirements of the Act.

Subsection 5-2(6) requires the proposed arrangement to identify any importing country requirements that will not be met through ordinary compliance with the Act (other than section 5-4 of the Poultry Rules), and record the controls to be implemented to ensure those importing country requirements will be met. This allows for flexibility where the requirements of the importing country are different from the requirements of the Act, while ensuring transparency about the control measures needed to meet importing country requirements.

The note following subsection 5-2(6) explains that section 5-4 of the Poultry Rules makes it a condition of an approved arrangement for export operations in relation to prescribed poultry meat or poultry meat products that all applicable importing country requirements are met.

Subsection 5-2(7) requires the implementation of a Hazard Analysis and Critical Control Point (HACCP) plan for each stage of the operations to prepare the prescribed poultry meat or poultry meat products for export. This process control is designed to prevent the occurrence of problems by assuring that controls are applied at any point in the production of poultry meat or poultry meat products for export, where hazardous or critical situations could occur. A hazard could include physical, biological or chemical contamination of the product or the product packaging.

Details of the requirements for a HACCP plan are in section 14 of the Australian Poultry Meat Standard. A guide to implementing a HACCP is available on the CSIRO website (<https://www.publish.csiro.au>).

Subsection 5-2(8) deals with requirements relating to operations to prepare poultry meat or poultry meat products that are not for export, or that are for animal food or pharmaceutical material. If such operations are also to be carried out at the registered establishment (alongside operations to prepare prescribed poultry meat or poultry meat products for export), the proposed arrangement must:

- specifically provide for those operations; and
- record details of the procedures (including any system of controls) to be implemented for the segregation, identification and security of prescribed poultry meat and poultry meat products prepared at the establishment to ensure the wholesomeness and integrity of the prescribed poultry meat or poultry meat products.

The note following subsection 5-2(8) refers the reader to section 5-26 of the Poultry Rules, which sets restrictions on operations to prepare prescribed poultry meat or poultry meat products at establishments where there are also operations to prepare poultry meat or poultry meat products not for export, or that are animal food or pharmaceutical products.

Subsection 5-2(9) details requirements relating to potable water. Where a proposed arrangement provides for potable water to be used in carrying out export operations for prescribed poultry meat or poultry meat products, the arrangement must record details of the system of controls to ensure the water will be free from harmful substances and pathogenic organisms. The details recorded in the approved arrangement must include how treatment, testing and verification of potable water will be conducted.

Part 2—Conditions of approved arrangement

Division 1—Purpose of this Part

Division 1 sets out the purpose of Part 2 of Chapter 5 of the Poultry Rules concerning conditions on approved arrangements for operations to prepare prescribed poultry meat or poultry meat products for export.

5-3 Purpose of this Part

Section 152 of the Act deals with conditions imposed on an approved arrangement. Paragraph 152(1)(b) allows the rules to prescribe conditions that will apply to an approved arrangement (unless the Secretary decides the condition is not to be a condition of the approved arrangement).

Subsection 5-3(1) provides that Part 2 of Chapter 5 of the Poultry Rules (sections 5-3 to 5-37) prescribes, for the purposes of paragraph 152(1)(b), the conditions of an approved arrangement for a kind of export operations in relation to prescribed poultry meat or poultry meat products.

Subsection 5-3(2) has the effect that each condition set out in Part 2 of Chapter 5 of the Poultry Rules applies to an approved arrangement for export operations in relation to prescribed poultry meat or poultry meat products if the condition relates to a kind of export operations covered by the arrangement.

Applying conditions to the approved arrangements prevents approved arrangements from merely meeting the requirements in Part 1 of Chapter 5 of the Poultry Rules in order to gain approval and then later altering procedures or processes in a manner detrimental to achieving the purpose of the approved arrangement. It is important that businesses continue to operate under an approved arrangement with appropriate processes and controls to ensure the goods are fit for human consumption and continue to meet importing country requirements.

The first note following section 5-3 refers the reader to paragraph 157(1)(b) of the Act, which provides that the conditions also apply to an approved arrangement that has been renewed.

The second note following section 5-3 alerts the reader that failure to comply with a condition of an approved arrangement is an offence and the contravention of a civil penalty provision under section 184 of the Act.

Division 2—General

Division 2 (sections 5-4 and 5-5) impose general requirements on approved arrangements for operations to prepare prescribed poultry meat or poultry meat products for export.

5-4 Importing country requirements must be met

Section 5-4 requires an approved arrangement to ensure that all importing country requirements relating to both the export operations that are carried out in relation to prescribed poultry meat or poultry meat products, and the prescribed poultry meat or poultry meat products themselves, are met. Ensuring all applicable importing country requirements are covered by the approved arrangement, and are met, enables ongoing market access for prescribed poultry meat and poultry meat products that are exported from Australia.

The note following section 5-4 refers the reader to the Manual of Importing Country Requirements for guidance on specific importing country requirements. This manual is available on the Department's website (<https://www.awe.gov.au>). Access to the document may require a password.

5-5 Requirements of Australian Poultry Meat Standard must be met

Section 5-5 requires an approved arrangement to ensure the requirements of the Australian Poultry Meat Standard (as modified by the Poultry Rules) are met in relation to both the export operations that are carried out in relation to prescribed poultry meat or poultry meat products, and the prescribed poultry meat or poultry meat products themselves.

This means that if prescribed poultry meat or poultry meat products must be prepared in a particular way, the approved arrangement must ensure its processes and procedures meet the requirements, as described by the Australian Poultry Meat Standard (as modified by the Poultry Rules). This ensures that prescribed goods exported from Australia continue to comply with food safety requirements and are fit for human consumption.

The first note following section 5-5 explains to the reader the requirements of the Australian Poultry Meat Standard relating to temperature controls must be complied with.

The second note following section 5-5 refers the reader to Division 2 of Part 2 of Chapter 1 of the Poultry Rules for modifications of the Australian Poultry Meat Standard.

Division 3—Preparation and transport

Division 3 (sections 5-6 to 5-17) sets out the conditions that apply to approved arrangements for prescribed poultry meat or poultry meat products in respect of preparation and transport.

5-6 Humane treatment of poultry

Section 5-6 requires prescribed poultry meat and poultry meat products to be derived from poultry that has been humanely treated before and during slaughter at a registered establishment, in accordance with the requirements of the Australian Poultry Meat Standard.

It is important that this is expressly provided for in the rules to ensure the humane treatment of the poultry, and animal welfare requirements, are not compromised. This section ensures handling and stress to the poultry is limited and prevents any poultry that have been inhumanely treated from entering the export supply chain.

The note following section 5-6 refers the reader to the *Model Code of Practice for the Welfare of Animals: Livestock at Slaughtering Establishments*. This document could in 2021 be viewed on CSIRO Publishing website (<https://www.publish.csiro.au>). This is to clarify what is meant by humane treatment as this concept is not defined in the Poultry Rules or the Act.

5-7 Poultry fat

Section 5-7 requires that poultry fat for export as food must only be derived from a carcase or carcase parts that have been passed as fit for human consumption.

This ensures that poultry fat is wholesome, not adulterated and maintains its export market eligibility.

5-8 Dressing poultry

Section 5-8 provides that poultry must be unconscious, and that primary bleeding must have been completed, prior to dressing taking place.

This condition is important to ensure poultry health and welfare is not compromised and meets Australian animal welfare obligations. This section ensures handling and stress to the animals is limited and prevents any animals that have been inhumanely treated from entering the export supply chain.

5-9 Areas where post-mortem inspections are carried out

Section 5-9 requires registered establishments to have a designated area where post-mortem inspections of carcasses or carcase parts can be carried out by authorised officers without any encroachment by equipment or persons (other than authorised officers carrying out the inspections).

This provision is important as it ensures only authorised officers may enter the inspection area, which ensures inspection of the carcasses or carcase parts can be appropriately evaluated without external influence.

5-10 Disposition if carcase parts aggregated

Section 5-10 requires that a disposition that is applied by an authorised officer, or a person designated in an approved arrangement to apply the disposition, to a carcase part that is aggregated with a part derived from a different poultry carcase, must be the most restrictive of the dispositions applied to any of the carcasses from which the aggregated parts are derived and any of the carcase parts forming part of the aggregation.

5-11 Compliance with decisions and dispositions

Section 5-11 imposes an obligation on the holder of the approved arrangement to comply with a decision or disposition (and any conditions specified in relation to a decision or disposition) that has been applied to poultry, carcasses or carcase parts, or prescribed poultry meat or poultry meat products by an authorised officer under Division 2 of Part 4 of Chapter 9.

The authorised officer for the purpose of performing functions (carrying out inspections) and exercising powers in relation to prescribed poultry meat or poultry meat products, can apply a disposition to the poultry, carcasses or carcase parts, to determine if the product is fit for human consumption, or recoverable as animal food or pharmaceutical material, and or fit for export from Australian territory.

A disposition is a specific type of decision made under sections 9-21 to 9-25 of the Poultry Rules, which refer specifically to ante-mortem (a decision made prior to slaughter) and post-mortem (decision about the carcasses, carcase parts, poultry meat or poultry meat products after slaughter) dispositions. The authorised officer can vary a disposition applied to prescribed poultry meat or poultry meat products following inspection, or set a condition, if further information is obtained about the product or the product deteriorates.

Subsection 5-11(1) requires a decision or disposition, and any conditions specified in relation to a decision or disposition, that has been applied to animals by an authorised officer, to be complied with.

Subsection 5-11(2) requires a disposition, and any conditions specified in relation to a disposition, that has been applied to carcasses or carcase parts, or to prescribed poultry meat or poultry meat products, by an authorised officer, to be complied with.

Subsection 5-11(3) defines a **decision** or **disposition** as a decision about the admission of poultry for slaughter, or a disposition that may be applied to poultry, carcasses or carcase parts, or prescribed poultry meat or poultry meat products, by an authorised officer under Division 2 of Part 4 of Chapter 9 of the Poultry Rules, and includes a variation of such a decision or disposition and any conditions specified in relation to such a decision or disposition.

These obligations ensure poultry meat and poultry meat products are correctly classified as fit for human consumption, or recoverable as animal food or pharmaceutical material, and that they are suitable to enter the export supply chain.

The first note following section 5-11 refers the reader to sections 9-21 to 9-24 of the Poultry Rules for decisions and dispositions that may be applied by authorised officers in relation to poultry, carcasses or carcase parts, or prescribed poultry meat or poultry meat products.

The second note following section 5-11 refers the reader to paragraphs 9-23(2)(d) and (3)(a) of the Poultry Rules, in relation to carcasses or carcase parts that may be retained for further inspection, tests or treatment.

5-12 Loading prescribed poultry meat or poultry meat products for transfer between registered establishments

Section 5-12 prescribes the conditions that must be met for poultry meat transport vehicles when being used for the transfer of prescribed poultry meat or poultry meat products between registered establishments. Prescribed poultry meat or poultry meat products for export must not be loaded into a poultry meat transport vehicle for transfer between registered establishments unless the vehicle :

- is not a source of contamination of the poultry meat or poultry meat products;
- is clean, free of odours and materials that are capable of contaminating the poultry meat or poultry meat products or their packaging; and
- is equipped or provided with an appropriate and adequate means of refrigeration;
- has an accurate measuring device to assess whether the requirements of the Poultry Rules are complied with during transport and loading;
- is maintained in a state of good repair and working order (having regard to its use); and
- is capable of being secured by a seal that is an official mark.

The purpose of this condition is to prevent contamination and ensure the wholesomeness of the prescribed poultry meat and poultry meat products during transport.

The note following section 5-12 refers the reader to clauses 11.1 to 11.4 of the Australian Poultry Meat Standard, which deals with the same issues.

5-13 Loading of prescribed poultry meat or poultry meat products—supervision

Section 5-13 deals with how the loading of prescribed poultry meat or poultry meat products for export must be supervised.

Subsection 5-13(1) requires loading to be carried out under the supervision of an authorised officer or, if it is accordance with the approved arrangement, a person who manages and or controls operations to prepare the poultry meat or poultry meat products for export at the registered establishment where the operations were last carried out (provided that person is designated in the approved arrangement as a person who may supervise the loading of

prescribed poultry meat or poultry meat products for export, and does so in accordance with the arrangement).

Subsection 5-13(2) requires a person who supervises the loading of prescribed poultry meat or poultry meat products to give the exporter a declaration stating that, at the date the declaration is made, the prescribed export conditions, applicable importing country requirements, and any other condition that applies to the poultry meat or poultry meat products under the Act are met. The declaration must not be made if there are no reasonable grounds for making it, must not be false and misleading and must be signed and dated by the person who made it (subsection 5-13(3)).

The first note following subsection 5-13(2) refers the reader to the United Nations Rules for Electronic Data Interchange for Administration, Commerce and Transport, which deals with electronic message formats. These Rule can be accessed from the United Nations Economic Commission for Europe website (<https://www.unece.org>).

The second note following subsection 5-13(2) refers the reader to the *Electronic Transactions Act 1999*, regarding the requirements to give information (including a declaration) in writing by electronic communication (see section 10 of that Act for electronic signatures).

The third note following subsection 5-13(2) refers the reader to subsection 11-6(2) of the Poultry Rules, whereby the exporter must retain each declaration given to the exporter a period of at least 2 years.

The note following subsection 5-13(3) alerts the reader that providing false or misleading information or documents is an offence and the contravention of a civil penalty provision under the Act and Schedule 1 to the *Criminal Code*.

5-14 Prohibitions on loading

Subsection 5-14(1) requires prescribed poultry meat and poultry meat products, at the time they are loaded for export, to be packaged effectively to protect them from contamination and deterioration in the conditions in which they are loaded, stored and transported from Australian territory.

Subsection 5-14(2) prohibits prescribed poultry meat or poultry meat products that are not wholesome from being loaded for export.

The note following section 5-14 refers the reader to clauses 15.114 to 15.125 of the Australian Poultry Meat Standard, which deals with packaging requirements.

5-15 Container system units and equipment for loading aircraft and vessels

Section 5-15 sets requirements for loading prescribed poultry meat or poultry meat products into a container system unit or onto an aircraft or vessel.

Subsection 5-15(1) provides that prescribed poultry meat and poultry meat products must not be loaded for export unless the container system unit or the area on an aircraft or vessel into which the poultry meat or poultry meat products are to be loaded is:

- not a source of contamination of the poultry meat or poultry meat products; and
- clean and free of odours and materials that are capable of contaminating poultry meat or poultry meat products or their packaging; and
- equipped or provided with an appropriate and adequate means of refrigeration (if necessary); and
- maintained in a state of good repair and working order having regard to its use.

There is also an additional requirement for loading for transport by sea, being that the container system unit and the area into which the poultry meat or poultry meat products are to be loaded must be capable of being secured by a bolt seal that is an official mark.

The note following subsection 15(1) refers the reader to section 8-13 of the Poultry Rules, which deals with bolt seals.

Subsection 5-15(2) requires prescribed poultry meat or poultry meat products to be stowed in a container system unit, or an area on an aircraft or vessel, in a manner that ensures their condition and packaging are not likely to be adversely affected during the flight or voyage.

The combined effect of sections 5-13, 5-14 and 5-15 is to ensure a suitably trained and qualified person will determine, at loading, that prescribed goods are wholesome, have been packaged in way that prevents contamination and deterioration, including during transport. This provides end chain assurance for trading partners.

5-16 When a bolt seal must be applied to container system unit

Section 5-16 requires a bolt seal that is an official mark to be applied to a container system unit into which prescribed poultry meat or poultry meat products are loaded (other than a container system unit intended to be transported by air), ensuring the integrity of the prescribed poultry meat or poultry meat products. A bolt seal is a locking device that is tamper-evident and requires a tool (such as a bolt cutter) to open and may only be applied by persons set out in subsection 8-22(2) of the Poultry Rules.

The first note following section 5-16 references the Manual of Importing Country Requirements (MICO-R) for guidance on when a seal may need to be applied to a container system unit intended to be transported by air if it transits another country. MICO-R could in 2021 be viewed on the Department's website (<http://www.awe.gov.au>). Access to the document may require a password.

The second and third notes following section 5-16 refer the reader to sections 8-13 and 8-22 of the Poultry Rules, which deal with bolt seals and who may apply them.

The fourth note following section 5-16 alerts the reader that a person may commit an offence or be liable for a civil penalty under the Act for interfering with an official mark.

5-17 Poultry meat transport vehicles, measuring devices and other equipment

Subsection 5-17(1) provides that prescribed poultry meat or poultry meat products must be transported between registered establishments by poultry meat transport vehicles and equipment that comply with applicable conditions prescribed by the Poultry Rules.

The first note following subsection 5-17(1) refers the reader to sections 5-12 to 5-14 of the Poultry Rules for examples of applicable conditions.

The second note following subsection 5-17(1) notifies the reader that there must also be compliance with the applicable requirements of the Australian Poultry Meat Standard as well as section 5-5 of the Poultry Rules.

Subsection 5-17(2) provides that poultry meat transport vehicles, and other equipment used in transporting prescribed poultry meat or poultry meat products, must be of a kind that ensures that the transport of the poultry meat or poultry meat products complies with the applicable conditions prescribed by Part 2 of Chapter 5 of the Poultry Rules.

The first note following subsection 5-17(2) refers the reader to sections 5-12 to 5-15 of the Poultry Rules for examples of applicable conditions.

The second note following subsection 5-17(2) notifies the reader that there must also be compliance with the applicable requirements of the Australian Poultry Meat Standard as well as section 5-5 of the Poultry Rules.

Subsection 5-17(3) provides that poultry meat transport vehicles and container system units used to transport prescribed poultry meat or poultry meat products must have accurate measuring devices to assess whether the applicable conditions Part 2 of Chapter 5 of the Poultry Rules are complied with during transport and loading.

This section operates to ensure the prescribed poultry meat and poultry meat products are not contaminated during transport and remain wholesome.

Division 4—Trade descriptions

Division 4 (sections 5-18 to 5-20) imposes conditions on approved arrangements concerning the application of trade descriptions on prescribed poultry meat or poultry meat products.

The note at the start of Division 4 refers the reader to Part 2 of chapter 8 of the Act and Part 2 of Chapter 8 of the Poultry Rules in relation to trade descriptions.

5-18 Trade description must be applied to prescribed poultry meat and poultry meat products that are intended to be exported

Section 5-18 imposes requirements relating to the application of trade descriptions or prescribed poultry meat or poultry meat products that are intended to be exported.

Subsection 5-18(1) requires a trade description that includes the information specified in subsection 5-18(3) to be applied to prescribed poultry meat or poultry meat products that are intended for export.

The first note following subsection 5(18)(1) refers the reader section 246 of the Act, as well as Chapter 8 of the Poultry Rules, for the definition of *trade description*.

The second note following subsection 5-18(1) refers the reader to section 247 of the Act for the description of the term *applied* in relation to a trade description.

The third note following subsection 5-18(1) refers the reader to section 5-20 of the Poultry Rules, for the alternative requirements for prescribed poultry meat and poultry meat products for further processing.

The fourth note following subsection 5-18(1) refers the reader to section 161 of the Act and section 5-39 of the Poultry Rules, for variations of approved arrangements where the relevant importing country authority does not require a trade description.

Subsection 5-18(2) provides that the trade description must be applied no later than the time the prescribed poultry meat or poultry meat products are packed.

Subsection 5-18(3) prescribes the content of the trade description that must be applied to prescribed poultry meat or poultry meat products which are intended for export. The trade description must include:

- the full description, of the poultry meat or poultry meat products including the type, and the net weight and country of origin of the poultry meat or poultry meat products;
- the registration number of the registered establishment where the poultry meat or poultry meat products were last packed before export;
- the name and address of the occupier of the registered establishment, exporter or consignee of the poultry meat or poultry meat products;
- for packaged poultry meat or poultry meat products—the date of packaging using the format Day-Month abbreviation-Year with leading zeros (for example, 02Feb2021);
- for packaged poultry meat or poultry meat products that were packed on behalf of a person other than the occupier of the registered establishment where operations to prepare the product for export were carried out, –the name of the person who packed the product, and the name of the person on whose behalf the product were packed;
- where the product contains 2 or more ingredients – a list of ingredients in descending order of ingoing weight;

- the identity of the batch;
- for poultry meat or poultry meat products that are not shelf-stable – a statement indicating whether the poultry meat or poultry meat products should be kept chilled or frozen; and
- for canned poultry meat or poultry meat products – the registration number allocated to the registered establishment where the canning was carried out, preceded by the letters “EX”, the date of packaging (in code or in clear), and description of the contents of the cans (in code or in clear).

The first note following subsection 5-18(3) notifies the reader that the trade description must be accurate, as prescribed by 8-6 of the Poultry Rules. Additionally, the note alerts the reader of Division 3 of Part 2 of Chapter 8 of the Act concerning offences and civil penalty provisions in relation to false trade descriptions.

The second note following subsection 5-18(3) refers the reader to Australian Consumer Law (within the meaning of the *Competition and Consumer Act 2010*), which contains prohibitions on engaging in conduct that is misleading or deceptive or is likely to mislead or deceive, and prohibitions on making false or misleading representations of the product (see sections 18, 29 and 151 of that Law).

The third note following subsection 5-18(3) provides examples of types of poultry are fowl, ducks, geese, turkeys and pigeons.

The fourth note following subsection 5-18(3) refers to section 1-5 of the Poultry Rules for a definition of the term *date of packaging*.

Subsection 5-18(4) sets out that, for the purposes of paragraph 5-18(3)(e), the registration number must be clearly identifiable as being the registration number of the registered establishment.

Subsection 5-18(5) also requires prescribed poultry meat and poultry meat products to meet each applicable requirement for the labelling and naming of ingredients and compound ingredients specified in Standard 1.2.4 of the Australia New Zealand Food Standards Code. This Standard could in 2021 be viewed on the Food Standards Australia New Zealand website (<https://www.foodstandards.gov.au>).

The note following subsection 5-18(5) refers the reader to section 12 of the Act for the definition of the *Australian New Zealand Food Standards Code*.

The inclusion of this information is important to ensure the identity of the prescribed poultry meat or poultry meat products can be ascertained, and provides assurance of the integrity of the goods to trading partners.

5-19 Prescribed poultry meat or poultry meat products in cartons or cans

Section 5-19 deals with the requirements for trade descriptions applied to prescribed poultry meat or poultry meat products contained in cartons or cans.

Subsection 5-19(1) provides that for trade descriptions applied to prescribed poultry meat or poultry meat products contained in cartons, the trade description must be applied to one end panel of the carton.

The note following subsection 5-19(1) refers the reader to section 1-5 for a definition of **carton**. **Carton** includes a case, crate and barrel.

Subsection 5-19(2) provides that, for trade descriptions relating to canned prescribed poultry meat or poultry meat products, the information required by paragraph 5-18(3)(k) must be either embossed, or indelibly applied to the cans. Paragraph 5-18(3)(k) requires the trade description to include the registration number of the registered establishment where the canning was carried out, the date of packaging and a description of the contents of the cans.

The inclusion of this information is important to ensure the identity of the prescribed poultry meat or poultry meat products can be ascertained, and provides assurance of the integrity of the goods to trading partners.

5-20 Prescribed poultry meat or poultry meat products for further processing

Section 5-20 has the effect that a trade description for prescribed poultry meat or poultry meat products that are transferred between registered establishments for further processing is only required to include the information that meets the requirements of subsection 5-20(1) (rather than the more detailed information ordinarily required in a trade description under section 5-18).

Subsection 5-20(1) allows the trade description for prescribed poultry meat or poultry meat products that are to be transferred between registered establishments for further processing to only include:

- the type of poultry from which the poultry meat or poultry meat products were derived;
- the date of packaging for packaged poultry meat or poultry meat products; and
- the words ‘FOR FURTHER PROCESSING BEFORE EXPORT’.

The first note following subsection 5-20(1) provides examples of types of poultry are fowl, ducks, geese, turkeys and pigeons.

The second note following subsection 5-20(1) refers the reader to section 1-5 of the Poultry Rules for the definition of **date of packaging**.

Subsection 5-20(2) requires that, if a trade description is applied to prescribed poultry meat or poultry meat products as permitted by subsection 5-20(1), the words ‘FOR FURTHER PROCESSING BEFORE EXPORT’ must be removed from the trade description before the poultry meat or poultry meat products are loaded for export, and replaced with a trade description that contains all the information required by subsection 5-18(3).

The note following subsection 5-20(2) refers the reader to Division 5 of Part 2 of Chapter 5 of the Poultry Rules for the requirement to apply an official mark to the poultry meat or poultry meat products.

Division 5—Official marks

Division 5 (sections 5-21 to 5-24) sets out the conditions that apply to approved arrangements for prescribed poultry meat or poultry meat products in relation to official marks.

The note at the beginning of Division 5 refers the reader to Part 3 of Chapter 8 of the Act and the Poultry Rules, which relate to official marks.

5-21 References to particular official marks

Section 5-21 has the effect that references to official marks in sections 5-21 to 5-24 are references to the official marks set out at Division 1 of Part 3 of Chapter 8 of the Poultry Rules.

5-22 Cartons containing prescribed poultry meat or poultry meat products

Section 5-22 provides details of the official mark that must be applied to prescribed poultry meat or poultry meat products packed in cartons, and when and where the official mark must be applied.

Subsection 5-22(1) provides that an Australia Inspected official mark must be applied to each carton in which prescribed poultry meat or poultry meat products are packed when the goods have been passed as fit for human consumption by a Commonwealth authorised officer.

Subsection 5-22(2) provides that an Australia Approved official mark must be applied to each carton in which prescribed poultry meat or poultry meat products are packed if:

- the poultry meat or poultry meat products have been passed as fit for human consumption by a person designated in an approved arrangement covering operations to prepare the poultry meat or poultry meat products for export; and
- the approved arrangement provides for inspections of the poultry meat or poultry meat products to be carried out under the approved arrangement; and
- the poultry meat or poultry meat products are intended for export.

This means that the type of official mark that is required to be applied to the carton will depend on who passed the prescribed poultry meat or poultry meat products in the carton as fit for human consumption.

The first note following subsections 5-22(1) and (2) refer the reader to section 8-22 of the Poultry Rules, which sets out who may apply the official mark.

The second note following subsection 5-22(1) and (2) explains that importing countries may require additional marks to be applied to the carton containing prescribed poultry meat or poultry meat products.

Subsection 5-22(3) requires an official mark that is applied to the carton in which prescribed poultry meat or poultry meat products are packed to be applied:

- as soon as practicable after it is packed; and
- before the carton is removed from the registered establishment where it was packed.

Subsection 5-22(4) requires an official mark that is applied to the carton in which prescribed poultry meat or poultry meat products are packed to be applied:

- to the same end of the carton as the trade description; and
- in a location that is conspicuous during handling.

The purpose of this section is to maintain market access and to provide that the official mark is applied in a way that is visible, secure and maintains the integrity of the goods.

5-23 Other applications of official mark to prescribed poultry meat or poultry meat products

Section 5-23 provides for when an official mark may be applied to prescribed poultry meat or poultry meat products (other than as required to be applied under sections 5-16 or 5-22). An official mark may be applied to the prescribed poultry meat or poultry meat products only if applied at a registered establishment in accordance with an approved arrangement.

The first note following section 5-23 refers readers to paragraph 8-19(1)(c) of the Poultry Rules, which deals with general rules relating to official marks and allows an official mark to be inserted into the packaging of poultry meat or poultry meat products.

The second note following section 5-23 refers the reader to subsection 8-22(2) of the Poultry Rules, which sets out who may apply the official mark.

This section does not apply to the application of a bolt seal to a container system unit or the application of an Australia Inspected or Australia Approved official mark to cartons, which must be applied in accordance with the requirements at sections 5-16 and 5-22 of the Poultry Rules. The purpose of this section is to clarify that an official mark can be applied to prescribed poultry meat or poultry meat products in a registered establishment in accordance with an approved arrangement in circumstance not covered by sections 5-16 and 5-22.

5-24 State or Territory classification marks must not be applied

Section 5-24 has the effect that an official State or Territory mark must not appear on prescribed poultry meat or poultry meat products for export. This is necessary to differentiate between domestic market and export market poultry meat and poultry meat products.

Division 6—Segregation, identification, security and traceability—general

Division 6 (sections 5-25 to 5-30) sets out the conditions that apply to approved arrangements for prescribed poultry meat or poultry meat products in respect of segregation, identification, security, traceability and integrity.

5-25 Segregation, identification, security and traceability—general

Section 5-25 provides the general requirements for segregation, identification, security, and traceability of prescribed goods during preparation and transportation.

Specifically, to the extent necessary to ensure that one or more objects of the Act are met, poultry from which poultry meat and poultry meat products are to be derived and poultry meat and poultry meat products meeting a particular description:

- must be identified and segregated during preparation and transport from other poultry, poultry meat or poultry meat products not meeting that description;
- must not be confused with other poultry, poultry meat or poultry meat products not meeting that description; and
- must be prepared and transported under conditions of security.

Section 5-25 further sets out the general requirement that, to the extent necessary to ensure that one or more of the objects of the Act are met, inventory controls and tracing systems must be maintained.

This ensures poultry, poultry meat, and poultry meat products are accurately identified and segregated from different kinds of animals and meat products and if necessary, can be effectively recalled. This is important for ensuring goods are fit for human consumption, maintain their integrity, meet the requirements of the Act and the Australian Poultry Meat Standard and will meet importing country requirements.

The first note following section 5-25 provides an example of separate identification and segregation of inedible material, which is required by section 5-27 of the Poultry Rules.

The second note following section 5-25 refers the reader to section 5-35 of the Poultry Rules, which sets requirements for inventory controls.

The third note following section 5-25 refers the reader to paragraph 14(a) of the Australian Poultry Meat Standard, which deals with tracing systems for recall purposes.

5-26 Establishments where poultry meat or poultry meat products that are not for export etc. are prepared

Section 5-26 provides for segregation, identification and security in establishments where poultry meat or poultry meat products that are not for export, or that are animal food or pharmaceutical material, are prepared. These rules are necessary to ensure the wholesomeness and integrity of the prescribed poultry meat or poultry meat products for export as food.

Subsection 5-26(1) prohibits the preparation of prescribed poultry meat or poultry meat products for export as food at the same establishment where operations are carried out to prepare poultry meat or poultry meat products that are not for export, or are for animal food or as pharmaceutical material. This is the general rule.

However, subsection 5-26(2) provides an exception to the general rule, in that the prohibition in subsection 5-26(1) does not apply if the other operations are carried out in accordance with an approved arrangement, and the wholesomeness and integrity of the prescribed poultry meat or poultry meat products are not jeopardised.

Subsection 5-26(3) requires procedures (including systems of controls) for the segregation, identification and security of prescribed poultry meat or poultry meat products to be sufficient to ensure their wholesomeness and integrity during packing, storing, handling and loading.

This condition is to ensure the prescribed poultry meat or poultry meat products are not contaminated by poultry meat or poultry meat products for use as animal food or as pharmaceutical material.

5-27 Integrity—general

Section 5-27 sets requirements in relation to the integrity and identity of prescribed poultry meat or poultry meat products prepared for export in accordance with an approved arrangement within a registered establishment. These rules are necessary to ensure the wholesomeness and integrity of the prescribed poultry meat or poultry meat products for export as food.

Subsection 5-27(1) provides a general requirement that the integrity of prescribed poultry meat or poultry meat products must be able to be ensured.

Subsection 5-27(2) provides (without limiting subsection 5-27(1)) specific requirements for ensuring the integrity of prescribed poultry meat and poultry meat products for export as food. Specifically, the prescribed poultry meat or poultry meat products must not be compromised by the presence of:

- poultry meat or poultry meat products (including imported poultry meat and poultry meat products) that were previously not prepared at a registered establishment;
- poultry meat or poultry meat products that are not for export or that have left the export system;
- any parts of poultry that are inedible (including any parts of an animal received for the purpose of inedible rendering or disposal by incineration);

- poultry meat or poultry meat products that are brought to an establishment but are not removed or unloaded from the conveyance that transported them there;
- poultry or poultry meat or poultry meat products that are retained for further inspection tests or treatment; or
- poultry meat or poultry meat products that are animal food or pharmaceutical material.

The note following subsection 5-27(2) refers the reader to section 12 of the Act for the definition of *conveyance*. *Conveyance* means an aircraft, a vessel, a vehicle, or any other means of transport prescribed by the rules.

Subsection 5-27(3) requires poultry meat or poultry meat products that are not prepared at a registered establishment, are not for export, or have left the export system to be able to be readily distinguished from prescribed poultry meat or poultry meat products for export during concurrent boning, and to be segregated from prescribed poultry meat or poultry meat products at all times. Concurrent boning refers to when prescribed and non-prescribed poultry meat or poultry meat products are being boned at the same place and at the same time.

Subsection 5-27(4) requires the identity of prescribed poultry meat or poultry meat products to be readily ascertainable and not be lost or confused with the identity of any other poultry meat or poultry meat products.

5-28 Identification—type of poultry

Section 5-28 provides that prescribed poultry meat or poultry meat products must be correctly identified as being derived from the type of poultry they purport to be derived from.

The note following subsection 5-28(1) explains examples of types of poultry are fowl, ducks, geese, turkeys and pigeons.

Subsection 5-28(2) clarifies that prescribed poultry meat or poultry meat products are not derived from the type of poultry they purport to be derived from if poultry meat or poultry meat products from another type of poultry are substituted wholly or partly for the relevant poultry meat or poultry meat products. For example, chicken meat cannot be substituted with turkey meat in any circumstance.

5-29 Export market eligibility

Subsection 5-29(1) provides that export market eligibility for prescribed poultry meat or poultry meat products must be maintained.

Subsection 5-29(2) requires poultry meat and poultry meat products that are not eligible for all export markets to be identified correctly and segregated from poultry meat and poultry meat products with different export market eligibility.

5-30 Action if prescribed poultry meat or poultry meat products are unwholesome or integrity etc. cannot be ensured

Section 5-30 details the action required if prescribed poultry meat or poultry meat products are or have become unwholesome, or where their integrity, traceability or identity cannot be ensured, or an importing country requirement in relation to the poultry meat or poultry meat product can no longer be met.

Subsection 5-30(1) provides that section 5-30 applies if the holder of an approved arrangement for operations to prepare prescribed poultry meat or poultry meat products for export at a registered establishment reasonably believes any of the following circumstances exist:

- there is, or there will be, a failure to meet an importing country requirement relating to the prescribed poultry meat or poultry meat products prepared for export at the registered establishment;
- prescribed poultry meat or poultry meat products prepared for export at the registered establishment in accordance with the approved arrangement are unwholesome or have deteriorated;
- the identification, traceability or integrity of the prescribed poultry meat or poultry meat products prepared for export at the registered establishment in accordance with the approved arrangement cannot be ensured;
- there is or there has been a failure of a procedure, or another circumstance occurs or has occurred, at the registered establishment that has affected or could affect the wholesomeness or integrity of the prescribed poultry meat or poultry meat products at the registered establishment;
- there is or has been a failure of a procedure, or another circumstance occurs or has occurred, at the registered establishment which has caused or could cause the prescribed poultry meat or poultry meat products at the registered establishment to deteriorate;
- the information and declarations required by section 5-31 in relation to a consignment of poultry meat or poultry meat products were not given as required by that section, or were inaccurate or incomplete.

The note following subsection 5-30(1) explains to the reader that poultry meat and poultry meat product may deteriorate but may still be wholesome.

Subsection 5-30(2) sets the requirements that apply where one or more of the circumstances listed in subsection 5-30(1) exist.

Subsection 5-30(2) requires the holder of the approved arrangement, as soon as practicable after becoming aware of the existence of a circumstance in subsection 5-30(1), to identify the affected prescribed poultry meat or poultry meat products and hold them securely and separately from other prescribed goods. The holder must also notify an authorised officer of the circumstance. The prescribed poultry meat or poultry meat products must continue to be segregated until an authorised officer applies a disposition to the poultry meat or poultry meat products under section 9-30 of the Poultry Rules, or notifies the holder of an approved arrangement what action must be taken in relation to the goods.

The note following subsection 5-30(2) refers the reader to clause 17 of the Australian Poultry Meat Standard, which contains similar requirements.

Subsection 5-30(3) provides if the holder of an approved arrangement gives notification orally, they must, as soon as practicable after giving the notification, also give the notification in writing.

These provisions provide flexibility and minimise costs to the industry as products that do not meet integrity requirements may not be excluded from export altogether if the integrity can be re-established.

Division 7—Transfers

Division 7 (sections 5-31 to 5-32) sets out the conditions that apply to approved arrangements for prescribed poultry meat or poultry meat products in respect of transfers between registered establishments.

5-31 Information and declarations relating to transferred prescribed poultry meat or poultry meat products

Section 5-31 details the information and declarations that are required to be given when a consignment of prescribed poultry meat or poultry meat products are being transferred from one registered establishment (the *transferring establishment*) to another registered establishment (the *receiving establishment*). The information and declarations are necessary to ensure the integrity of prescribed poultry meat or poultry meat products that are transferred between registered establishments, and to ensure full traceability of prescribed goods.

Subsection 5-31(1) specifies the information and declarations that must be given to the occupier of the receiving establishment. This includes:

- a full description of the poultry meat or poultry meat products and its quantity;
- information about storage conditions (i.e. whether the poultry meat or poultry meat products are chilled, frozen or shelf-stable);
- the name, address and registration number of the transferring and receiving establishments;
- the date or dates when operations to prepare the poultry meat or poultry meat products (other than storing, handling or loading) were last carried out before the transfer;

- the quantity of poultry meat or poultry meat products in the consignment, and the number and kind of packages (if any),
- identification of the conveyance used to transport the poultry meat or poultry meat products ;
- the name of each country the product is being exported to if operations were carried out to meet importing country requirements;
- a description of any means of security applied to the poultry meat or poultry meat products;
- a declaration stating that, at the day the declaration was made, the prescribed export conditions and any other relevant conditions of Act have been complied with, any relevant importing country requirements have been met and that all of the information given in relation to the consignment is true and complete.

The first note following subsection 5-31(1) refers the reader to the definition of **conveyance** in section 12 of the Act.

The second note following subsection 5-31(1) refers the reader to subsections 5-31(2) to (4) for additional requirements relating to the declarations as mentioned in paragraphs 5-31(1)(k) and (l).

Subsection 5-31(2) provides that the information and declarations specified in subsection 5-31(1) must be in writing and in a form approved by the Secretary. The declaration must be either given to the occupier of the receiving establishment when the consignment leaves the transferring establishment or accompany the consignment when it arrives at the receiving establishment.

The first note following subsection 5-31(2) refers the reader to the United Nations Rules for Electronic Data Interchange for Administration, Commerce and Transport, which deals with electronic message formats. These Rule can be accessed from the United Nations Economic Commission for Europe website (<https://www.unece.org>).

The second note following subsection 5-31(2) refers the reader to sections 9 and 10 of the *Electronic Transactions Act 1999*, regarding the requirements to give information (including a declaration) in writing by electronic communication (see section 10 of that Act for electronic signatures).

Section 5-31(3) requires a declaration in relation to a consignment of prescribed poultry meat or poultry meat products under this section to be made by either:

- the holder of the approved arrangement for operations to prepare the poultry meat or poultry meat products for export at the transferring establishment; or
- a person who manages or controls those operations at the transferring establishment if the relevant approved arrangement provides for export inspection procedures that include the making of the declaration in relation to poultry meat or poultry meat products and allows for the person to make the declaration.

The first note following subsection 5-31(3) refers the reader to paragraph 5-2(4)(e) of the Poultry Rules, which deals with where the relevant importing country authority requires an alternative inspection arrangement.

Section 5-31(4) provides that a declaration in relation to a consignment of prescribed poultry meat or poultry meat products under this section must not be made if there are no reasonable grounds for making it, must not be false or misleading, and must be signed and dated by the person making the declaration.

The first note following subsection 5-31(4) refers the reader to sections 171 and 179 of the Act, regarding the suspension or revocation of the approved arrangement if the requirements referred to in section 5-31 are not met.

The second note following subsection 5-31(4) alerts the reader that a person may commit an offence or be liable to a civil penalty for providing false or misleading information or documents under sections 137.1 and 137.2 of Schedule 1 to the *Criminal Code Act 1995*, and sections 368 and 369 of the Act.

5-32 Information and declarations not received or inaccurate or incomplete

Section 5-32 sets out what action must be taken if the information and declarations required under section 5-31 are not given to the occupier of the receiving establishment as required or are inaccurate or incomplete.

In such circumstances, the prescribed poultry meat or poultry meat products must be either held at the receiving establishment under conditions of security and cannot be dealt with further for export as food until written approval to do so is given by an authorised officer or, alternatively, identified as not for export as food segregated from prescribed poultry meat and poultry meat products. This ensures the integrity of prescribed poultry meat or poultry meat products for export.

Division 8—Meat inspection services

Division 8 (section 5-33) sets out the conditions that apply to approved arrangements for prescribed poultry meat or poultry meat products in respect of meat inspection services.

5-33 Authorised officer must be present while certain export operations are carried out

Subsection 5-33(1) has the effect that the requirements in section 5-33 apply in relation to an approved arrangement for operations to prepare prescribed poultry meat or poultry meat products for export at a registered establishment if the approved arrangement either:

- provides that an authorised officer must be present at the establishment while operations of that kind are being carried out; or
- is subject to a condition that requires an authorised officer to be present at the establishment while operations of that kind are being carried out.

Subsection 5-33(2) provides that, in such circumstances, operations to prepare prescribed poultry meat or poultry meat for export in accordance with the approved arrangement must not be carried out at the registered establishment unless:

- meat inspection services have been allocated to the establishment under Part 6 of Chapter 4 of the Poultry Rules (registered establishments); and
- there is a memorandum of agreed intent between the occupier of the establishment and the Secretary regarding that allocation of meat inspection services; and
- an authorised officer is present at the establishment.

Meat inspection services are required to ensure the safety, suitability and integrity of prescribed goods for export.

Division 9—Management practices—export operations

Division 9 (sections 5-34 to 5-37) imposes conditions on an approved arrangement in relation to management practices for operations to prepare prescribed poultry meat or poultry meat products for export.

5-34 Management practices, organisational structure, resources and personnel

Subsection 5-34(1) requires the holder of an approved arrangement to ensure that the management practices, organisational structure, resources provided to carry out export operations and personnel who carry out those export operations (and the training those personnel receive) are appropriate to ensure:

- compliance with the requirements of the Act in relation to both the export operations and the prescribed poultry meat or poultry meat products covered by the approved arrangement; and
- importing country requirements relating to both the export operations and the prescribed poultry meat and poultry meat products are met.

Subsection 5-34(2) requires the holder of the approved arrangement to also make a written record of the management practices, organisational structure, resources and personnel (and the training the personnel receive) referred to in subsection 5-34(1).

The first note following subsection 5-34(2) refers the reader to subsection 11-8(2) of the Poultry Rules, which provides that the required records must be kept for at least 2 years.

The second note following subsection 5-34(2) refers the reader to the *Electronic Transactions Act 1999* in respect of making electronic records.

5-35 Verification of compliance with the Act and other matters

Section 5-35 details matters that must be verified, the requirement for a record of verification, and the necessary inventory controls to verify compliance.

Subsection 5-35(1) provides that the holder of an approved arrangement must verify that carrying out export operations at a registered establishment in accordance with the approved arrangement will comply with the Act, and with the conditions in Divisions 2 to 7 of Part 2 of Chapter 5, and section 5-34, of the Poultry Rules. This verification is necessary to demonstrate compliance with the regulatory controls in the Act.

Subsection 5-35(2) provides that a written record must be made of the methods, procedures, tests, monitoring and other evaluations used to verify compliance with the matters referred to in subsection 5-35(1), and the results of the verification. The written record will need to be retained for at least 2 years and may assist with audits.

The note following subsection 5-35(2) refers the reader to subsection 11-8(2) of the Poultry Rules, which provides that the required records must be kept for at least 2 years.

Subsection 5-35(3) requires the necessary inventory controls to be used in verifying compliance with the conditions in Divisions 2 to 7 and section 5-34.

Subsection 5-35(4) requires the inventory controls to be in writing, comprehensive and able to be audited under Part 1 of Chapter 9 of the Act and as required by section 5-37 of the Poultry Rules.

Paragraph 5-35(5)(a), without limiting subsection 5-35(4), requires the inventory controls to include records of:

- the number of poultry of different types slaughtered at the registered establishment in accordance with the approved arrangement and their origin and lot; and
- the prescribed poultry meat or poultry meat products received at the registered establishment in accordance with the approved arrangement and the prescribed poultry meat or poultry meat products prepared for export at the registered establishment in accordance with the approved arrangement (including, for both, their description and quantity, origin and location, and also, for prescribed poultry meat or poultry meat products prepared for export at the registered establishment, their item and lot); and
- all poultry meat or poultry meat products removed from the registered establishment in accordance with the approved arrangement (including their descriptions and the quantities removed of each description), preparation details and their destination; and
- all poultry meat or poultry meat products at the registered establishment that are not intended to be removed from the registered establishment (for example, poultry meat or poultry meat products no longer intended for export and destroyed at the establishment) (including their description and the quantities of each description).

Paragraph 5-35(5)(b), without limiting subsection 5-35(4), requires the inventory controls to also include a reconciliation of the poultry and prescribed poultry meat or poultry meat products and records referred to in paragraph (a).

The note following subsection 5-35(5) provides examples of types of poultry are fowl, ducks, geese, turkeys and pigeons.

5-36 Action must be taken to address non-compliance

Section 5-36 provides that corrective action must be taken to address any non-compliance or likely non-compliance with any matter referred to in subsection 5-35(1) in carrying out export operations in relation to prescribed poultry meat or poultry meat products in accordance with an approved arrangement. Corrective action must also be taken to ensure that the non-compliance does not occur again, or that the likely non-compliance is avoided. The effectiveness of the corrective action must be assessed.

Subsection 5-36(2) provides that the holder of the approved arrangement must make a written record of the corrective action taken and the assessment of the effectiveness of the corrective action.

The note following subsection 5-36(2) refers the reader to subsection 11-8(2) of the Poultry Rules, which has the effect that the holder of the approved arrangement must keep the required record for at least 2 years.

5-37 Internal audit and management review

Section 5-37 sets out the requirements for internal audits and management practice reviews, the records that must be made, and when internal audits are not required.

Subsection 5-37(1) requires, subject to subsection 5-37(2), that internal audits and management reviews be conducted at a registered establishment. The purpose of the internal audits and management reviews are to measure the effectiveness of the management practices of the holder of an approved arrangement in ensuring compliance with the matters referred to in subsection 5-35(1).

The note following subsection 5-37(1) explains that an internal audit for the purposes of this section is not an audit under Part 1 of Chapter 9 of the Act.

Subsection 5-37(2) provides that internal audits are not required to be conducted if fewer than 3 people are employed, or provide services, at the registered establishment in accordance with the approved arrangement, and management reviews are conducted in accordance with the approved arrangement. This is because an internal audit cannot be effectively undertaken where there are fewer than 3 people employed at the registered establishment. However, management reviews are still necessary.

Subsection 5-37(3) requires a written record to be made of each internal audit and management review undertaken. The record must contain the results of the internal audit or management review; any decisions (if any) made or actions taken as a result of an audit or management review.

The note following subsection 5-37(3) refers the reader to subsection 11-8(2) of the Poultry Rules, which has the effect that the holder of the arrangement must keep the required record for at least 2 years.

Part 3—Renewal of approved arrangement

Part 3 of Chapter 5 of the Poultry Rules (section 5-38) deals with matters relating to the renewal of an approved arrangement for operations to prepare prescribed poultry meat or poultry meat products for export at a registered establishment.

5-38 Period within which application to renew approved arrangement must be made

Section 155 of the Act deals with an application to renew an approved arrangement. Subsection 155(2) allows the holder of an approved arrangement to apply to the Secretary to renew the approved arrangement. Subsection 155(4) requires an application for renewal to be made within the period prescribed by the rules (paragraph 155(4)(a)) or a longer period if allowed by the Secretary (paragraph 155(4)(b)).

Section 5-38 prescribes, for the purposes of paragraph 155(4)(a) of the Act, that an application to renew an approved arrangement for a kind of export operations in relation to prescribed poultry meat products must be made in the period of 60 days starting on the day that is 180 days before the approved arrangement is due to expire.

The purpose of providing a specific timeframe for allowing applications to be made is to give the Secretary sufficient time to consider an application before a decision is required to be made. Requiring a person to apply for renewal at between 180 and 120 days before the expiry date ensures that the Secretary has sufficient time to decide the application before the approval expires.

The first note following section 5-38 provides an example of how section 5-38 works in practice. For example, if an approved arrangement expires on 8 July in a year (other than a leap year), an application for renewal can be made at any time between 9 January and 10 March in that year.

The second note following section 5-38 explains that under the subsection 155(1) of the Act, only approved arrangements that have an expiry date will need to be renewed.

Part 4—Variation of approved arrangement

Part 4 of Chapter 5 of the Poultry Rules (sections 5-39 to 5-41) sets out requirements relating to the variation of an approved arrangement for operations to prepare prescribed poultry meat or poultry meat products for export at a registered establishment.

Division 1—Variations by holder

5-39 Requirements that must be met for variation to be approved or conditions varied

Section 161 of the Act deals with varying an approved arrangement. Subsection 161(1) allows the holder of an approved arrangement to apply to the Secretary to approve a variation of the approved arrangement in the following circumstances:

- where the proposed variation is to implement an alternative regulatory arrangement approved under paragraph 379C(1)(a) of the Act;
- where the holder and the Secretary consider that the proposed variation is significant;
- where the proposed variation is to the conditions of the approved arrangement.

Subsection 161(3) of the Act allows the Secretary to refuse to approve the variation if the Secretary is not satisfied of one or more of the requirements listed in that subsection. Paragraph 161(3)(c) allows the rules to prescribe additional requirements.

Section 5-39 is made for the purposes of paragraph 161(3)(c). It applies in relation to an application to approve a variation of an approved arrangement for operations to prepare prescribed poultry meat or poultry meat products for export, or to vary the conditions of such an arrangement, but only if the application has been made because the relevant importing country authority does not require:

- one or more applicable requirements (the *relevant requirements*) in the Australian Poultry Meat Standard to be met; or
- compliance with one or more of the conditions (the *relevant conditions*) in Divisions 3 to 7 of Part 2 of Chapter 5 of the Poultry Rules to be met;

and the relevant importing country authority has a different requirement that must be met for the prescribed poultry meat or poultry meat products.

The note following subsection 5-39(1) notifies the reader that a variation of an approved arrangement, or of the conditions of an approved arrangement, may be needed to implement an alternative regulatory arrangement approved under section 379C(1)(a) of the Act or another significant variation (directing the reader to Subdivisions B and C of Division 1 of Part 4 of Chapter 5 of the Act).

Subsection 5-39(2) provides, for the purpose of paragraph 161(3)(c) of the Act, that the Secretary may refuse to approve the variation if not satisfied that:

- compliance with the different importing country requirement will not result in the relevant requirements (Australian Poultry Meat Standard) being met or the relevant conditions (the Poultry Rules) being complied with; and
- the approved arrangement provides for a system of controls to be implemented to ensure that the different importing country requirement will be complied with; and

- the system of controls will be implemented in accordance with the approved arrangement.

These measures are necessary so that the relevant importing country requirements are met and that market access to the importing country is enabled and maintained.

5-40 Significant variations

Section 164 of the Act lists the matters the holder of the approved arrangement and the Secretary must have regard to in considering whether a proposed variation, or the combined effect of two or more variations, is significant. Paragraph 164(2)(c)(ii) allows the rules to prescribed kinds of variations.

Section 5-40 prescribes, for the purposes of paragraph 164(2)(c)(ii) of the Act, the following kinds of variations in relation to an approved arrangement for a kind of export operations in relation to prescribed poultry meat or poultry meat products. The prescribed variations are:

- a variation of the person who manages or controls the export operations;
- a variation of the functions a person is permitted to perform in accordance with approved arrangements, including making declarations, manufacturing, supplying, possessing, applying, altering or interfering with an official mark, applying a resemblance, or manufacturing, supplying or possessing an official marking device;
- a variation of the export operations that might jeopardise the wholesomeness of the prescribed poultry meat or poultry meat products or affect the ability to ensure their integrity, or that might adversely affect the ability to assess whether the wholesomeness of the goods has been jeopardised;
- a variation that will provide for operations to prepare poultry meat or poultry meat products not for export or for animal food or pharmaceutical materials to be carried out at the registered establishment as well as operations to prepare prescribed poultry meat or poultry meat products for export;
- a variation that will provide for a technique to be implemented in carrying out operations to prepare the prescribed poultry meat or poultry meat products for export that is different from the technique required to be implemented by the Australian Poultry Meat Standard;
- a variation that relates to or varies a variation of the approved arrangement implementing an alternative regulatory arrangement approved under paragraph 379C(1)(a) of the Act in relation to operations to prepare prescribed poultry meat or poultry meat products for export.

Prescribing these variations is a transparency measure to assist industry to determine which variations are significant and to reassure importing countries of the integrity of approved arrangements for prescribed poultry meat or poultry meat products.

The first note following section 5-40 refers the reader to section 21 of the Act, which deals with who is taken to be a person who manages or controls export operations.

The second note following section 5-40 refers the reader to section 1-8 of the Poultry Rules, which deals with alternative techniques than those required by the Australian Poultry Meat Standard.

Division 2—Variations required by Secretary

5-41 Other reasons for requiring holder to vary approved arrangement

Subsection 165(1) of the Act allows the Secretary to make certain variations of an approved arrangement on their own initiative (including by requiring the holder of the approved arrangement to vary an aspect of the approved arrangement).

Subsection 165(2) sets out the grounds of which the Secretary must be satisfied before varying an approved arrangement under subsection 165(1). Paragraph 165(2)(h) enables the rules to prescribe additional grounds for the variation of an approved arrangement.

Section 5-41 prescribes, for the purposes of paragraph 165(2)(h) of the Act, that the Secretary may require the holder of an approved arrangement for operations to prepare prescribed poultry meat or poultry meat products to vary an aspect of the arrangement under paragraph 165(1)(a) of the Act, if the Secretary is no longer satisfied that compliance with the system of controls provided for in the approved arrangement will ensure there will be reasonable grounds to issue:

- an export permit for prescribed poultry meat or poultry meat products prepared in accordance with the approved arrangement; or
- a government certificate in relation to prescribed poultry meat or poultry meat products that are prepared in accordance with the approved arrangement.

Part 5—Matters relating to applications

Part 5 of Chapter 5 of the Poultry Rules (sections 5-42 to 5-44) deals with matters relating to applications under the Act concerning approved arrangements.

5-42 Application of this Part

Section 5-42 sets out the applications under the Act to which the requirements in sections 5-43 and 5-44 apply. These applications are:

- an application under section 150 of the Act to approve a proposed arrangement for a kind of export operations in relation to prescribed poultry meat or poultry meat products;
- an application under section 155 of the Act to renew an approved arrangement for a kind of export operations in relation to prescribed poultry meat or poultry meat products;

- an application under section 161 of the Act to approve a variation of an approved arrangement, or a variation of conditions of an approved arrangement, for a kind of export operations in relation to prescribed poultry meat or poultry meat products;
- an application that is taken to have been made under subsection 166(2) of the Act to approve a varied approved arrangement for a kind of export operations in relation to prescribed poultry meat or poultry meat products.

The first note following section 5-42 explains that the application must be made in a manner approved by the Secretary and, if the Secretary has approved a form for the application, must include the information required by the form (see paragraphs 377(1)(a) and (b) of the Act).

The second note following section 5-42 explains that the Secretary may accept any information previously given to the Secretary in connection with an application made under the Act as satisfying any requirement to give that information under subsection 377(1) of the Act.

5-43 Initial consideration period

Section 379 of the Act details the requirements dealing with applications made under the Act. Subsection 379(3) allows the rules to prescribe the initial consideration period in which an application must be considered by the Secretary. If the Secretary does not make a decision on the application within the prescribed initial consideration period (and the initial consideration period is not extended) the application is taken to have been refused.

Section 5-43 prescribes, for the purposes of subsection 379(3) of the Act, an initial consideration period of 120 days. The initial consideration period may be extended under subsection 379(5) of the Act. The period of 120 days is appropriate, having regard to the matters the Secretary must consider in granting or refusing an application.

The note following section 5-43 clarifies that the consideration period for an application starts on the day after the day the Secretary receives the application (see subsection 379(4) of the Act).

5-44 Period within which request relating to application must be complied with

Subsection 379(9) of the Act allows the Secretary to make a number of requests in relation to a relevant application, including requesting additional information or requesting consent to enter premises. Paragraph 379(10)(b) allows the rules to prescribe a maximum period within which the request must be complied with.

Section 5-44 prescribes, for the purposes of paragraph 329(1) of the Act, a period of 6 months within which a request by the Secretary under subsection 379(9) to an applicant for information or documents relating to the application must be complied with. At the end of this period if the application has not been decided, it will be deemed to be refused. This is a reviewable decision.

The maximum period prescribed by this section is appropriate as it permits sufficient time to comply with matters provided in subsection 379(9) of the Act. The period provides certainty for industry on the maximum amount of time required for an application to be processed. The time provided will also allow for abandoned applications to be deemed refused after the period has elapsed.

CHAPTER 7—EXPORT PERMITS

An export permit is a document that confirms the eligibility of goods for export and facilitates the exit of these goods from Australia. A person may apply to the Secretary for an export permit for prescribed goods. The export permit must be issued in writing and will be in effect for a particular period. The permit may be varied, suspended or revoked, and may be required to be returned.

The prescribed export conditions in section 2-4 of the Poultry Rules require the exporter of prescribed poultry meat or poultry meat products to hold an export permit covering the export.

Part 1—Issue of export permit

7-1 Period of effect of export permit

Section 228 of the Act sets the period of effect of an export permit. An export permit takes effect when it is issued (paragraph 228(a)) and remains in force as prescribed by the rules unless it is revoked earlier under section 233 of the Act (paragraph 228(b)).

Section 7-1 prescribes, for the purposes of paragraph 228(b) of the Act, the period of effect of an export permit for prescribed poultry meat or poultry meat products. An export permit remains for prescribed poultry meat or poultry meat products remains in force for 28 days, starting on the day the permit is issued. The 28 day period is appropriate as export permits often relate to perishable goods.

The first note following section 7-1 explains that an export permit takes effect when it is issued (see paragraph 228(a) of the Act).

The second note following section 7-1 refers the reader to the storage requirements for an export permit under section 11-5 of the Poultry Rules.

Part 2—Variation, suspension and revocation of export permit

7-2 Period of effect of varied export permit

Section 230 of the Act sets the period of effect of a varied export permit. A varied export permit takes effect when it is issued (paragraph 230(a)) and remains in force as prescribed by the rules, unless it is revoked earlier under section 233 of the Act (paragraph 230(b)).

Section 7-2 is made for the purposes of paragraph 230(b) of the Act and prescribes that the period of effect of an approved varied export permit for prescribed poultry meat or poultry meat products is the remainder of the period for which the export permit as originally issued was in force under section 7-1. This period is appropriate as export permits often made in relation to perishable goods. A variation does not affect the original period of effect for a permit.

The note following section 7-2 explains that a varied export permit takes effect when it is issued (see paragraph 228(a) of the Act).

7-3 Circumstances in which export permit may be suspended

Subsection 231(1) of the Act provides that the Secretary may suspend an export permit if the Secretary reasonably believes that circumstances prescribed by the rules exist.

Section 7-3 prescribes, for the purposes of subsection 231(1) of the Act, the circumstances in which the Secretary may suspend an export permit for prescribed poultry meat or poultry meat products. The prescribed circumstances are the same as the circumstances for revoking an export permit that are listed in paragraph 233(1)(a) to (f) of the Act and section 7-4 of the Poultry Rules. These circumstances are where the Secretary reasonably believes that:

- the integrity of the prescribed poultry meat or poultry meat products cannot be ensured;
- a condition of the permit has been, or is being, contravened;
- the requirements of the Act have not been complied with, or are not likely to be complied with, before the prescribed poultry meat or poultry meat products are imported into the importing country;
- an importing country requirement relating to the prescribed poultry meat or poultry meat products will not be, or is not likely to be, met before the goods are imported into the importing country;
- the holder of the permit made a false, misleading or incomplete statement in an application for the permit, or gave false, misleading or incomplete information to the Secretary or another person performing functions or exercising powers under the Act or a prescribed agriculture law;
- the holder of the permit has contravened a requirement of the Act;
- the additional circumstances set out below in section 7-4 of the Poultry Rules.

These circumstances have the potential to adversely affect Australia's trading reputation and access to importing country markets. The consequences may be serious and may affect a number of permit holders and Australia's export industries for poultry meat and poultry meat products. It is essential that action can be taken by the Secretary in the prescribed circumstances to mitigate these consequences by suspending export permits.

7-4 Other circumstances in which export permit may be revoked

Section 233 of the Act allows the Secretary to revoke an export permit if the Secretary reasonably believes that one or more of the circumstances listed in subsection 233(1) exist. Paragraph 233(1)(g) allows the rules to prescribe additional circumstances.

Section 7-4 prescribes, for the purposes of paragraph 233(1)(g) of the Act, other circumstances, in addition to those specified in paragraphs 233(1)(a) to (f) of the Act, for

revoking an export permit for prescribed poultry meat or poultry meat products. The additional circumstances are:

- there is a risk that the poultry meat or poultry meat product have deteriorated or are likely to deteriorate, or are unwholesome or are likely to be unwholesome;
- the poultry meat or poultry meat products are no longer intended to be exported using that export permit;
- a person (other than the holder of the permit) has given the Secretary information or a document in relation to the poultry meat or poultry meat products that is false, misleading or incomplete;
- a condition or disease that is likely to affect the acceptability of the poultry meat or poultry meat products to the importing country is present in Australian territory;
- the export of the poultry meat or poultry meat products could result in trade of the export of other goods from Australian territory being adversely affected.

These circumstances are likely to affect Australia's trading reputation and may affect access to importing country markets. The consequences may be serious and may affect a number of permit holders. It is important that export permits can be revoked (or suspended) in the prescribed circumstances to mitigate these consequences.

The note following section 7-4 explains that under section 7-6 of the Poultry Rules, an export permit that is revoked must be returned to the Secretary within 10 business days, unless it was an electronic permit.

Part 3—Other matters

7-5 Changes that require additional or corrected information to be given to the Secretary

Section 235 of the Act requires the holder of an export permit to give the Secretary additional or corrected information in certain circumstances, including if a change prescribed by the rules occurs (paragraph 235(1)(b)).

Section 7-5 prescribes, for the purposes of paragraph 235(1)(b) of the Act, changes that require the holder of an export permit to provide the Secretary with additional or corrected information in relation to prescribed poultry meat or poultry meat products for which an export permit is in force. These changes are where there are reasonable grounds to suspect that:

- the integrity of the poultry meat or poultry meat products cannot be assured;
- an importing country requirement relating to the poultry meat or poultry meat products will not be, or is not likely to be, met before the prescribed poultry meat or poultry meat products are imported into the importing country; or

- a prescribed export condition relating to the poultry meat or poultry meat products has not been complied with when the condition should have been complied with.

This requirement only applies in relation to prescribed poultry meat and poultry meat products for which an export permit is in force.

The purpose of this provision is to place an obligation on the exporter to ensure the permit continues to accurately reflect the circumstances for the issue of the permit. The consequences may be serious and may affect a number of permit holders, so it is essential that additional or corrected information is provided. This also ensures export permits are only issued where the prescribed poultry meat or poultry meat products are supplied in compliance with the Act and the Poultry Rules, enhancing Australia's reputation as a reliable trading partner.

The note following section 7-5 alerts the reader that an exporter may be liable to a civil penalty if the exporter fails to comply with a requirement under section 235 of the Act.

7-6 Return of export permit

Subsection 236(1) of the Act provides that the rules may require a person to whom an export permit was issued to return the permit to the Secretary in the circumstances prescribed by the rules and at the time, or within the period, prescribed by the rules.

Section 7-6 is made for the purposes of section 236 of the Act and requires an exporter to return an export permit for prescribed poultry meat or poultry meat products to the Secretary within 10 business days if the permit has been revoked.

The purpose is to ensure export permits are not misused by placing an obligation on the exporter to return the permit. This preserves the integrity of the export permit system by ensuring a permit is not used fraudulently to support the unauthorised export of prescribed goods. Ten business days is a reasonable time to allow the holder to return the permit to the Secretary, but is short enough to mitigate against the risk of the permit being misused.

The requirement in subsection 7-6(1) does not apply to an export permit issued by electronic means (subsection 7-6(2)), as there will not necessarily be a physical permit to return.

7-7 Notification that prescribed poultry meat or poultry meat products are not to be exported

Section 237 of the Act provides that the rules may require the holder of an export permit for a kind of prescribed goods to notify the Secretary, in writing, if it is no longer intended to export the goods in the circumstances prescribed by the rules, and at the time, or within the period, prescribed by the rules.

Section 7-7 is made for the purposes of section 237 of the Act, and requires the holder of an export permit for prescribed poultry meat or poultry meat products to notify the Secretary in writing, if it is no longer intended to export prescribed goods because of listed a circumstance in section 7-3 (which lists the grounds for suspending an export permit) of the Poultry Rules. The notification must be given as soon as practicable but within 10 business days after the decision not to export the prescribed goods is made.

The purpose is to preserve the integrity of the export permit system and ensures the Secretary is aware of when prescribed goods are no longer intended to be exported.

CHAPTER 8—OTHER MATTERS RELATING TO EXPORT

Part 1—Notices of intention to export

Part 1 of Chapter 8 of the Poultry Rules (sections 8-1 to 8-4) deals with matters relating to notices of intention to export. A notice of intention to export prescribed goods serves to inform the Secretary about a person's intention, allowing the prescribed goods to be assessed prior to an export permit being granted. The notice of intention to export must include any information and documents prescribed by this Part. A person who has given a notice of intention to export must give the Secretary additional or corrected information in certain circumstances.

8-1 Information to be included in notice of intention to export

Section 243 of the Act sets out the general requirements for a notice of intention to export a consignment of prescribed goods. A notice of intention to export a consignment of prescribed goods must meet the requirements in subsection 243(1). Paragraph 243(1)(c) allows the rules to prescribe information that must be included in a notice of intention to export a consignment of, or including, prescribed goods.

Section 8-1 is made for the purposes of paragraphs 243(1)(c) of the Act and requires a notice of intention to export a consignment of, or including, prescribed poultry meat or poultry meat products, to include a declaration stating all the information included in the notice of intention is true and correct. This ensures the consignment, and any related documents, can be assessed prior to an export permit being granted.

The first note following section 8-1 explains that the Secretary may approve a single form for a notice of intention to export a consignment of prescribed poultry meat or poultry meat products, and an application for an export permit for the prescribed poultry meat or poultry meat products.

The second note following section 8-1 explains that the Secretary may accept any information or document previously given to the Secretary in connection with an application made under the Act, or any notice of intention to export a consignment of prescribed poultry meat or poultry meat products given under the Act, as satisfying any requirements to give that document under subsection 243(1) of the Act (see subsection 243(2) of the Act).

This allows flexibility around information which has previously been submitted to the Secretary in relation to different types of applications, to avoid creating unnecessary work by providing the same documentation multiple times.

8-2 Person who must give notice of intention to export

Section 243 of the Act details general requirements of a notice of intention to export a consignment of prescribed goods. A notice of intention to export a consignment of prescribed goods must meet the requirements in subsection 243(1). Paragraph 243(1)(e) of the Act requires that a notice of intention to export a consignment of, or including, prescribed goods be given by a person prescribed by the rules in relation to the goods.

Section 8-2 prescribes, for the purposes of paragraph 243(1)(e) of the Act, that the person who intends to export a consignment of, or including, prescribed poultry meat or poultry meat products must give the notice of intention to export the consignment.

The purpose is to ensure the person intending to export the prescribed poultry meat or poultry meat products does not have another person submit a notice of intent on their behalf.

8-3 Person to whom notification of intention to export must be given

Paragraph 243(1)(f) of the Act allows the rules to prescribe the person to whom the notice of intention to export must be given.

Section 8-3 prescribes, for the purposes of paragraph 243(1)(f) of the Act, that the notice of intention to export a consignment of, or including, prescribed poultry meat or poultry meat products, to be given to the Secretary.

Giving written notice to the Secretary ensures the necessary information is provided for assessment prior to an export permit being issued.

8-4 When notice of intention to export must be given

Paragraph 243(1)(g) of the Act allows the rules to prescribe when or within a period the notice of intention to export a consignment of prescribed goods must be given.

Subsection 8-4(1) provides, for the purposes of paragraph 243(1)(g) of the Act, that a notice of intention to export a consignment of, or including, prescribed poultry meat or poultry meat products must be given to the Secretary as soon as reasonably practicable before the date the consignment is proposed to be exported.

Subsection 8-4(2) provides that, if an assessment of the prescribed poultry meat or poultry meat products is required under Part 2 of Chapter 9 of the Act, the notice of intention to export must be given to the Secretary at a time that will ensure there is sufficient time for the assessment to be carried out.

This allows the Secretary time to consider the notice before the prescribed poultry meat or poultry meat product are exported. It also allows any assessment to be carried out and information provided to the Secretary for consideration.

The note following section 8-4(2) alerts the reader that it is a prescribed export condition for export of prescribed poultry meat or poultry meat products that a person prescribed by section 8-2 must have given a notice of intention to export a consignment of, or including, prescribed poultry meat or poultry meat products to the Secretary prior to the consignment being exported (see section 2-4).

Part 2—Trade descriptions

The aim of trade description compliance management is to ensure that an occupier's approved arrangement is effective and operates in accordance with the Act to ensure prescribed goods intended for export as food:

- are wholesome or are identified for further processing for food;
- meet requirements to have an accurate trade description;
- meet importing country requirements necessary to maintain market eligibility; and
- are traceable, can be recalled if required and their integrity is ensured.

8-5 Purpose of this Part

Section 248 of the Act allows the rules to make provision for and in relation to trade descriptions for prescribed goods that are intended to be exported.

Section 8-5 provides that Part 2 of Chapter 8 (sections 8-5 to 8-7) is made for the purpose of section 248 of the Act, and makes provision for and in relation to trade descriptions for prescribed poultry meat or poultry meat products that are intended to be exported.

This ensures trade descriptions include relevant information and are used in a way that will ensure that the identity of prescribed poultry meat and poultry meat products can be ascertained and not confused with any other goods. The term ***trade description*** is defined in section 246 of the Act.

The note following section 8-5 alerts the reader that a person who engages in conduct that contravenes a provision in Part 2 of Chapter 8 of the Poultry Rules may commit an offence or be liable to a civil penalty under section 249 of the Act.

8-6 General requirements for trade descriptions

The purpose of section 8-6 is to set out the general requirements for trade descriptions applied to prescribed poultry meat or poultry meat products.

Subsection 8-6(1) provides that trade descriptions applied to prescribed poultry meat or poultry meat products must be accurate and unambiguous, legible, prominent, conspicuous, not obscured and, to the extent practicable, be securely attached and tamper evident.

The note following subsection 8-6(1) refers the reader to section 247 of the Act, for a definition of ***applied***.

Subsection 8-6(2) requires that information or pictures that are applied to prescribed poultry meat or poultry meat products, in addition to the trade description, must not be inconsistent with the information required to be included in trade descriptions under Division 4 of Part 2 of Chapter 5 of the Poultry Rules (conditions of approved arrangements for operations to prepare prescribed poultry meat or poultry meat products for export).

This helps to ensure the prescribed poultry meat or poultry meat products are wholesome, meet importing country requirements necessary to maintain market eligibility, are traceable, and can be recalled if required.

8-7 Trade descriptions in language other than English

Section 8-7 applies to a trade description that is applied to prescribed poultry meat or poultry meat products if any part of the trade description is in a language (the *foreign language*) other than English.

Subsection 8-7(2) provides that the foreign language part of the trade description must not be inconsistent with the English part of the trade description.

Subsection 8-7(3) requires certain persons, on request by an authorised officer, to make available an English translation of the foreign language part of the trade description. Those persons are:

- the holder of an approved arrangement for operations to prepare prescribed poultry meat or poultry meat products for export at the registered establishment where the trade description was applied to the prescribed poultry meat or poultry meat products;
- the holder of an approved arrangement for operations to prepare prescribed poultry meat or poultry meat products for export at a registered establishment (other than the registered establishment referred to in paragraph 8-7(3)(a)) if the prescribed poultry meat or poultry meat products are being held at that registered establishment at the time of the request; or
- the exporter of the prescribed poultry meat or poultry meat products.

Subsection 8-7(4) provides that the translation of the foreign part of the trade description into English must be done by an appropriately qualified person who is not an employee of, and is independent of, the person who has been asked to make the translation available. This is necessary to independently verify that the foreign language part of the trade description is not inconsistent with the English part of the trade description.

Part 3—Official Marks

Official marks are market labels, tags or other seals applied to products exported from Australia. Each type of label has specific mark dimensions. There are strict conditions set out to comply with export requirements. Official marks indicate compliance with the Act and help to ensure products are not rejected when exported, which may result in large costs for business and the economy. Official marks are relied upon by governments of importing countries as an assurance of the authenticity of a document or the origin, integrity and compliance of goods with importing country requirements or other relevant standards.

The ‘Australia Inspected’ mark signifies that prescribed goods have been inspected by an Australian Government official and passed as fit for human consumption at the official post-mortem inspection. This mark is applied to the goods at the registered establishment where they were prepared as signified by the registration number of the establishment on the official mark. The mark also provides a traceability function, indicating the establishment where the meat was last prepared. The poultry meat or poultry meat products retain ‘fit for human consumption status’ at down-chain establishments where the temperature chain is maintained and the goods continue to be handled hygienically and ensuring its integrity (e.g. market eligibility).

The registration number on the ‘Australia Inspected’ (or ‘Australia Approved’) changes when the goods are subject to some form of processing.

Division 1—Marks that are official marks

8-8 Purpose of this Division

Subsection 255(1) of the Act allows the rules to provide that a specified mark is an official mark for the purposes of the Act.

Section 8-8 provides Division 1 of Part 3 of Chapter 8 (sections 8-8 to 8-17) is made for the purpose of subsection 255(1) of the Act and specifies the marks that are official marks for prescribed poultry meat or poultry meat products that are intended to be exported. An official mark is a mark that is applied to goods to confirm the identity, condition or status of the goods, or to secure the goods.

8-9 Tolerances for dimensions of official marks

Section 8-9 details the tolerances (or margins of error) for the dimensions of official marks, or a part of such a mark, that are specified in Division 1 of Part 3 of Chapter 8. This is to ensure consistency in the dimensions of official marks.

For dimensions of up to 10 millimetres, the tolerance is plus or minus 1 millimetre. For dimensions of more than 10 millimetres, the tolerance is plus or minus 2 millimetres.

8-10 Official mark—Australia Inspected

Subsection 8-10(1) provides a representation of the design of an ‘Australia Inspected’ official mark which is an official mark for the purposes of the Act for prescribed poultry meat or poultry meat products that are intended to be exported.

The registration number of the registered establishment where operations to prepare poultry meat or poultry meat products for export were carried out must be included in the centre of the mark where ‘A’ is in the representation. The mark must meet the dimensions set out in subsection 8-10(2).

Subsection 8-10(2) provides the acceptable dimensions of the ‘Australia Inspected’ official mark. The specified dimensions are for the width and height of the mark, the height of the letters, and the height of the establishment registration number. The required dimensions are those set out in columns 2, 3 and 4 of the table in subsection 8-10(2) depending on whether the mark is computer-generated or is of a normal or small size.

The ‘Australia Inspected’ mark signifies that the relevant poultry meat or poultry meat products have been inspected by an Australian Government official in the registered establishment where they were prepared and have been passed as fit for human consumption.

8-11 Official mark—foreign country identification

Subsection 8-11(1) provides a representation of the design of a ‘foreign country identification’ official mark. This kind of official mark must have the relevant foreign country identification mark inserted in where the letter ‘A’ is in the representation, and must meet the required dimensions set out in subsection 8-13(3).

Subsection 8-11(2) provides that a *foreign country identification mark* is a mark that is required to be applied to poultry meat or poultry meat products that are to be imported into that country, as determined by the relevant importing country authority.

The note following subsection 8-11(2) refers the reader to the Manual of Importing Country Requirements for guidance on foreign country identification marks. In 2021, this manual could be viewed on the Department’s website (<https://www.awe.gov.au>). Access to the document may require a password.

Subsection 8-11(3) provides the acceptable dimensions of a foreign country identification official mark. These dimension requirements relate to the diameter of the circle (50 millimetres), the minimum height of the letters in the word ‘Australia’ (6 millimetres) and the dimensions of the foreign country identification mark (as specified by the relevant importing country authority).

This mark enables the export of poultry meat or poultry meat products from Australia to the importing country.

The note following subsections 8-11(3) refers the reader to the Manual of Importing Country Requirements for guidance on the requirements for the dimensions of a foreign country identification mark. In 2021, this manual could be viewed on the Department’s website (<https://www.agriculture.gov.au>). Access to the document may require a password.

8-12 Official mark—tamper-indicative metal strap seal

Section 8-12 provides that a tamper-indicative metal strap seal is an official mark if it meets requirements of this section. The requirements are:

- the seal must be a tamper-indicative strap seal that can be secured in a loop by inserting one end of the seal into or through a protected locking mechanism on the other end; and

- the seal must comply with ISO 17712:2013 *Freight containers—Mechanical seals*, as that document exists at the commencement of the Poultry Rules. This international standard is a single source of information on mechanical seals and is available for a fee from the International Organization for Standardization (www.iso.org). The standard is an appropriate requirement as certain countries have compliance with the standard as a requirement to maintain market access. The manufacture and supply of tamper-indicative metal straps are tightly controlled. The control of tamper-indicative metal straps combined with the requirement to meet international standards provides appropriate assurance to trading partners and facilitates trade; and
- the seal must also bear the words ‘Australian Government’ and bear a unique number, or a unique combination of letters and numbers, provided to the manufacturer of the seal by the Department.

The purpose of mechanical seals, as part of the security system, is to determine whether a freight container has been tampered with, for example, whether there has been unauthorised access to the container.

These strap seals may also be used for securing goods or items that need to be held under Department control (e.g. to retain poultry meat pending outcomes on residue testing) or carcasses that require further inspection prior to making a disposition e.g. jaundice carcasses. These goods are put into a retain chiller or cage sealed with a strap seal overnight for assessment the next day.

Straps seals are also commonly used to seal the door to the onsite plant vet’s office or containers for keys to the office and for class C security cabinets, cabinets that the official marks are stored in when not in use.

8-13 Official mark—bolt seal

Section 8-13 provides that a bolt seal is an official mark if it meets the requirements of this section. A bolt seal is a tamper-evident locking device that requires a tool to be removed. The purpose of the bolt seal is to determine whether the container has been tampered with.

The requirements of the section are:

- the seal must be a high security bolt seal;
- the seal must comply with ISO 17712:2013 *Freight containers—Mechanical seals*, as that document exists at the commencement of the Poultry Rules. This international standard is a single source of information on mechanical seals and in 2021 was available for a fee from the International Organization for Standardization (www.iso.org). The standard is an appropriate requirement as certain countries have compliance with the standard as a requirement to maintain market access. The manufacture and supply of bolt seals are tightly controlled by the Department. The control of bolt seals combined with the requirement to meet international standards provides appropriate assurance to trading partners and facilitates trade;

- the seal must also bear the words ‘Australian Government’ and bear a unique number, or a unique combination of letters and numbers, provided to the manufacturer of the seal by the Department; and
- the seal must also be coated with green or blue plastic.

A bolt seal is required to be applied to a container system unit (other than a container system unit intended for transport by air) under section 5-16 of the Poultry Rules, and an official mark is required to be applied to the prescribed poultry meat or poultry meat products under Division 5 of Part 2 of Chapter 5 of the Poultry Rules (approved arrangements).

Bolt Seals also provide a link between the government certificate and the container. The seal number is printed on the government certificate so the import inspector can be confident the goods inside the container relate to the goods described in the government certificate.

They are also seen as a form of biosecurity assurance in that containers commonly move through a number of ports during the voyage. The sealing of the container provides confidence that there was no possibility of biosecurity risks being introduced inside the container.

8-14 Official mark—Australia Approved

Subsection 8-14(1) provides a representation of the design of a ‘Australia Approved’ official mark, which is an official mark for the purposes of the Act. The registration number of the registered establishment where the operations to prepare the relevant poultry meat or poultry meat products for export were carried out must be included in the centre of the mark where ‘A’ is in the representation. The mark must meet the dimensions set out in subsection 8-14(2).

Subsection 8-14(2) provides the acceptable dimensions of the ‘Australia Approved’ official mark. These dimensions relate to the width (50 millimetres) and height (39 millimetres) of the oval mark, the height of the letters (6 millimetres) and the height of the establishment registration number (8 millimetres).

The ‘Australia Approved’ official mark signifies that poultry meat or poultry meat products that are intended for export have been inspected and are fit for human consumption. ‘A’ signifies the establishment number of the establishment where the goods were last packed.

8-15 Official mark—carton seal

Section 8-15 provides a representation of the design for a seal applied to a carton (a ‘carton seal’) that is an official mark for the purposes of the Act.

The ‘carton seal’ mark must meet the specifications in paragraphs 8-15(1)(a) to (c). This includes being printed in black (except for the Coat of Arms, which must be printed in red) on a white or security background, including the substitutions set out in subsection 8-15(3), and meeting the dimensions specified in subsection 8-15(2).

Subsection 8-15(2) provides the acceptable dimensions of the ‘carton seal’ official mark. These dimensions relate to the width of the mark (not less than 45 millimetres and not more than 75 millimetres) and the height of the mark (not less than 125 millimetres and not more than 160 millimetres).

Subsection 8-15(3) sets out the information to be substituted at ‘A’, ‘B’ and ‘C’ in the design of the carton seal official mark. The registration number of the establishment where operations to prepare the relevant poultry meat or poultry meat products for export were carried out must be included where ‘A’ is in the representation. A number, or a combination of letters and numbers, associated with the manufacturer of a mark must be substituted ‘B’ is in the representation. A number, or a combination of letters and numbers, that are unique to each official mark must be substituted where ‘C’ is in the representation. This information is necessary to ensure the identification and traceability of the exported consignment of the poultry meat or poultry meat products and to provide confidence that the poultry meat or poultry meat product inside the carton has not been manipulated between the carton being packed in Australia and it being opened in an overseas country.

8-16 Official mark—poultry meat or poultry meat products opened for assessment and resealed

Section 8-16 provides a representation of the design of a carton seal applied to a carton after it has been opened, inspected and re-sealed, which is an official mark for the purposes of the Act.

The mark must meet the specifications set out in paragraphs 8-16(1)(a) to (c). These include being printed in green (except for the Coat of Arms which must be printed in red) on a white or security background, including the substitutions set out in subsection 8-16(3), and meeting the dimensions specified in subsection 8-16(2).

Subsection 8-16(2) provides the required dimensions of the ‘opened and resealed carton seal’ official mark. These dimensions relate to the width of the mark (not less than 45 millimetres and not more than 75 millimetres) and the height of the mark (not less than 125 millimetres and not more than 160 millimetres).

Subsection 8-16(3) sets out the information that must be substituted at ‘A’ and ‘B’ in the design of the opened and resealed carton seal official mark. A number, or a combination of letters and numbers, associated with the manufacturer of a mark must be included where ‘A’ is in the representation. A number, or a combination of letters and numbers, which are unique to each official mark must be included where ‘B’ is in the representation.

During export loading at registered establishment, it is common for a sample of cartons to be opened to check the temperature of the poultry meat or poultry meat product. If these cartons had carton seals applied at the packing establishment, it is necessary to apply the re-seals to maintain the tamper evidence. Carton seals from the packing establishment are not available at the cold store, thus the use of the re-seals.

This information is necessary to ensure the identification and traceability of the exported consignment of the poultry meat or poultry meat products.

8-17 Official mark—Australian Government

Section 8-17 provides a representation of the design of an ‘Australian Government’ official mark. The mark must contain a number identifying the person that used the mark where ‘XXXX’ is included in the representation.

The note following sections 8-17 explains that sections 8-20 to 8-24 and section 8-34, which relate to the manufacture, supply application and alteration or interference with an official mark, do not apply to an ‘Australian Government’ official mark.

Division 2—General rules relating to official marks

8-18 Purpose and application of this Division

Subsection 255(2) of the Act allows the rules to make provision for and in relation to:

- the persons or classes of persons, who may manufacture, possess, apply, alter or interfere with an official mark;
- the methods of applying official marks;
- the circumstances in which an official mark may, or must not, be applied;
- security of official marks;
- removal or defacement of official marks;
- making records in relation to official marks;
- any other matter relating to official marks.

Subsection 8-18(1) provides that Division 2 (sections 8-18 to 8-29) is made for the purposes of subsection 255(2) of the Act and makes provision for and in relation to certain matters relating to the official marks specified in Division 1 for poultry meat or poultry meat products that are intended to be exported.

This is to ensure that official marks are not misused and only applied to eligible goods.

The note following subsection 8-18(1) alerts the reader that a person may commit an offence or be subject to a civil penalty liability under the Act if they engage in conduct that contravenes a provision on this Division (see section 258 of the Act) or other provisions in Division 3 of Part 3 of Chapter 8 of the Act.

Subsection 8-18(2) provides that sections 8-20 to 8-24 which relate to the manufacture, supply, application and alteration of or interference with an official mark, do not apply to an ‘Australian Government’ official mark as provided for in section 8-17 of the Poultry Rules.

8-19 Interpretation

Section 8-19 sets out when an official mark is ***applied*** to poultry meat or poultry meat products. This is fundamental to managing conduct in relation to that official mark.

Subsection 8-19(1) provides that, for the purposes of the Poultry Rules, an official mark is ***applied*** to poultry meat or poultry meat products if it is:

- applied directly to the poultry meat or poultry meat products, their packaging or any covering containing the poultry meat or poultry meat products;
- applied to anything attached to the poultry meat or poultry meat products, their packaging, or any covering containing the poultry meat or poultry meat products;
- inserted into anything in which the poultry meat or poultry meat products are packaged, or any covering containing the poultry meat or poultry meat products.

Subsection 8-19(2) specifies that a reference in Division 2 to a particular official mark is a reference to an official mark provided for in Division 1 of Part 3 of Chapter 8 of the Poultry Rules.

8-20 Persons who may manufacture or supply official marks for poultry meat or poultry meat products

Section 8-20 specifies who may manufacture or supply a kind of official mark for poultry meat or poultry meat products. Limiting who may manufacture or supply official marks is necessary to ensure the integrity of the system for manufacturing official marks.

The persons who can manufacture or supply an official mark for poultry meat or poultry meat products are:

- authorised officers; or
- persons who are able to manufacture or supply the official mark under an approved arrangement; or
- persons acting in accordance with a direction given by an authorised officer; or
- a person who has been given a written approval by the Secretary to manufacture or supply the official mark in relation to specified poultry meat or poultry meat products and who is acting in accordance with that approval.

These restrictions do not apply to the manufacture or supply of the official mark specified in section 8-17 ('Australian Government' official mark).

The note following section 8-24 refers the reader to section 309 of the Act for how a direction may be given by an authorised officer.

8-21 Persons who may possess official marks that have not been applied to poultry or poultry meat products

Section 8-21 specifies who may possess official marks that have not been applied to poultry meat or poultry meat products. Limiting who can possess official marks ensures they are accounted for and only applied by nominated personnel.

The persons who can possess a kind of official mark for poultry meat or poultry meat products are:

- persons who are permitted, under section 8-20 of the Poultry Rules, to manufacture or supply official marks of that kind; or
- authorised officers; or
- persons who are able to possess the official mark under an approved arrangement; or
- persons acting in accordance with a direction given by an authorised officer; or
- a person who has been given a written approval by the Secretary to possess the official mark at a specified registered establishment and in relation to specified poultry meat or poultry meat products and who is acting in accordance with that approval.

These restrictions do not apply to the manufacture or supply of the official mark specified in section 8-17 ('Australian Government' official mark).

The note following section 8-21 refers the reader to section 309 of the Act, which deals with directions given by authorised officers.

8-22 Persons who may apply official marks to poultry meat or poultry meat products etc.

Section 8-22 deals with who may apply certain official marks to poultry meat or poultry meat products.

Subsection 8-22(1) provides that the requirements in section 8-22 apply to both:

- a bolt seal that is an official mark and is required to be applied to a container system under section 5-16 of the Poultry Rules; and
- an official mark required to be applied to carcasses or carcase parts and cartons in which prescribed poultry meat or poultry meat products are packed under Division 5 of Part 2 of Chapter 5 of the Poultry Rules (approved arrangements).

Subsection 8-22(2) specifies who may apply these official marks to poultry meat or poultry meat products. Limiting those who can apply official marks ensures official marks are only applied to products passed as fit for human consumption and are used in accordance with the Act and Poultry Rules.

The persons who can apply an official mark in these circumstances are:

- authorised officers; or
- persons acting in accordance with a direction given by an authorised officer; or
- a person designated in an approved arrangement as a person who may apply the official mark to poultry meat or poultry meat products, if the application is in accordance with the approved arrangement; or
- a person who has been given a written approval by the Secretary to apply the official mark at a specified registered establishment and in relation to specified poultry meat or poultry meat products, if the application is in accordance with that approval.

These restrictions do not apply to the manufacture or supply of the official mark specified in section 8-17 ('Australian Government' official mark).

The note following section 8-22 refers the reader to section 309 of the Act, which deals with directions given by authorised officers.

8-23 Circumstances in which official mark must not be applied to poultry meat or poultry meat products

Section 8-23 provides circumstances where an official mark or a foreign country identification official mark must not be applied to poultry meat and poultry meat products.

Subsection 8-23(1) provides a person must not apply an official mark to poultry meat or poultry meat products if the goods are not wholesome, have deteriorated, or the integrity cannot be ensured.

The note following subsection 8-23(1) refers the reader to section 5-27 of the Poultry Rules for requirements to ensure the integrity of prescribed poultry meat or poultry meat products.

Subsection 8-23(2) provides that a foreign country identification official mark must not be applied to poultry meat or poultry meat products if the circumstances in which that mark may be applied, as specified by the relevant importing country authority, no longer exist.

The note following subsection 8-23(2) refers the reader to section 8-11 of the Poultry Rules, which identifies the foreign country identification mark and its requirements.

8-24 Alteration of and interference with official marks

Section 8-24 details who may alter or interfere with an official mark, and in what circumstances, regardless of whether it has been applied to poultry meat or poultry meat products. This is necessary to ensure official marks can be relied upon by the governments of importing countries as an assurance about the authenticity of a document or the origin, integrity and compliance of goods with importing country requirements.

An official mark can only be altered or interfered with in the following circumstances:

- where the alteration or interference is required or permitted by the Poultry Rules; or
- where the alteration or interference is done by a person who is an authorised officer; or
- where the alteration or interference is done by a person who is acting in accordance with a direction given by an authorised officer; or
- where the alteration or interference is done in accordance with an approved arrangement and by a person who is designated in the arrangement as a person who may alter or interfere with an official mark; or
- where the alteration or interference is by a person who has been given a written approval by the Secretary to alter or interfere with the official mark at a specified registered establishment and in relation to specified poultry meat or poultry meat products and who is acting in accordance with that approval.

The first note following section 8-24 refers the reader to section 309 of the Act, which deals with directions given by authorised officers.

The second note following section 8-24 alerts the reader that altering or interfering with an official mark so as to make the mark false, misleading or deceptive may be an offence or the contravention of a civil penalty under sections 261 or 262 of the Act.

8-25 Official marks must be legible and securely attached

Section 8-25 requires official marks applied to poultry meat or poultry meat products to be legible and securely attached. This is required to ensure the marks don't fall off the product, especially during transport. If poultry meat or poultry meat products were to arrive in the importing country without the official marks because they fell off, then this would raise concerns that the meat was not produced in accordance with the Australian export requirements and the importing country requirements.

8-26 Security of official marks

Section 8-26 requires a person who is in possession of an official mark that has not been applied to any poultry meat or poultry meat products to ensure the official mark is securely stored. This ensures that all official marks can be accounted for when not in use.

8-27 Removal or defacement of official marks

Section 8-27 sets out requirements relating to the removal or defacement of official marks that have been applied to poultry meat or poultry meat products, including when the marks must be removed or defaced, and who can take that action.

Subsection 8-27(1) requires an official mark to be removed or defaced if the poultry meat or poultry meat products to which it has been applied are no longer wholesome or have deteriorated. This ensures that poultry meat and poultry meat products which are no longer wholesome or have deteriorated do not enter, or are removed from, the export supply chain.

Subsection 8-27(2) clarifies that if an official mark has been applied to a carton in which poultry meat or poultry meat products are packed, the official mark must be removed or defaced when the poultry meat or poultry meat product in the carton are no longer intended to be exported, or are no longer intended to be exported in that carton.

Subsection 8-27(3) requires a foreign country identification official mark to be removed or defaced if the circumstances in which that mark may be applied to poultry meat or poultry meat products, as specified by the importing country no longer exist.

Subsection 8-27(4) sets out who may remove or deface an official mark in accordance with a requirement in subsections 8-27(1), (2) or (3). This is limited to:

- an authorised officer or a person acting in accordance with a direction from an authorised officer; or
- a person designated in an approved arrangement as a person who may remove or deface the official mark; or
- a person who has been given a written approval by the Secretary to remove or deface the official mark at a specified registered establishment and in relation to specified poultry meat or poultry meat approval, and who is acting in accordance with that approval.

The first note following subsection 8-27(4) refers the reader to section 309 of the Act for how a direction may be given by an authorised officer.

The second note following subsection 8-27(4) alerts the reader to section 258 of the Act, which has the effect that a person may commit an offence or be liable to a civil penalty if the person contravenes a provision in this Division.

8-28 Records of official marks manufactured or supplied

Section 8-28 requires the holder of an approved arrangement that covers the manufacture or supply of official marks for use at establishments that are registered for operations to prepare prescribed poultry meat or poultry meat products for export to make a daily written record detailing each kind, and number of each kind, of official marks manufactured on that day.

The holder must also make a written record stating each day a consignment of official marks was supplied to an establishment registered for operations to prepare prescribed poultry meat or poultry meat products for export, each the kind of official mark included in the consignment, and how the consignment is transported.

The note following section 8-28 explains to the reader that under section 11-9(1) of the Poultry Rules the holder of an approved arrangement must retain each record for at least 3 years.

8-29 Records of official marks received, applied, removed, defaced, destroyed or returned

Section 8-29 requires the holder of an approved arrangement to prepare prescribed poultry meat or poultry meat products for export at a registered establishment to make a written record of consignments of official marks received at the establishment, official marks applied to, or removed from, poultry meat or poultry meat products at the establishment, official marks defaced or destroyed at the establishment and official marks returned from the establishment.

This ensures only goods that meet requirements have official marks applied and tracks official marks within a registered establishment.

The note following section 8-29 explains that under section 11- 9(2) of the Poultry Rules the holder of an approved arrangement must retain each record for at least 3 years.

Division 3—Marks resembling official marks

8-30 Purpose of this Division

Section 256 of the Act allows the rules to make provision for and in relation to marks that resemble an official mark or are apparently intended to resemble an official mark.

Section 8-30 provides that Division 3 (sections 8-30 to 8-32) is made for the purposes of section 256 of the Act and makes provision for and in relation to a mark that resembles, or is apparently intended to resemble or pass for, an official mark specified in Division 1 of Part 3 of Chapter 8 of the Poultry Rules (a *resemblance*). This includes when a resemblance may be treated as an official mark, and who may apply a resemblance.

The note following section 8-30 alerts the reader to section 258 of the Act, which has the effect that a person may commit an offence or be liable to a civil penalty if the person contravenes a provision in Division 3 of Part 2 of Chapter 8 of the Poultry Rules.

8-31 Circumstances in which a mark resembles an official mark

Section 8-31 details circumstances in which a mark resembles an official mark. A mark will be considered to resemble an official mark set out in Division 1 of Part 3 of Chapter 8 of the Poultry Rules (i.e. be a resemblance) if it is the same design as the official mark in all but its dimensions.

8-32 Persons who may apply a resemblance

Section 8-32 details who may apply a resemblance to poultry meat or poultry meat product, or to goods containing poultry meat or poultry meat products.

This is limited to a person who is designated in an approved arrangement as a person who may apply the resemblance to poultry meat or poultry meat products or goods containing poultry meat or poultry meat products, and where the application of the resemblance is in accordance with the arrangement.

Division 4—Official marking devices

An official marking device is defined in section 257 of the Act as a device that is capable of being used to apply an official mark but does not include a device prescribed by the rules.

8-33 Purpose of this Division

Subsection 257(2) of the Act allows the rules to make provision for and in relation to the following:

- the persons, or classes of persons, who may manufacture or possess an official marking device;
- the use of official marking devices;
- security of official marking devices;
- damaged official marking devices;
- destruction of official marking devices;
- making records of official marking devices;
- any other matter relating to official marking devices.

Section 8-33 provides that Division 4 (sections 8-33 to 8-38) is made for the purpose of subsection 257(2) of the Act and makes provision for and in relation to official marking devices that are capable of being used to apply official marks as specified in Division 1 to poultry meat or poultry meat products that are intended to be exported. These requirements are necessary to ensure the security of official marking devices and preserve the integrity of official marks applied to poultry meat or poultry meat products.

The note following section 8-33 alerts the reader to section 258 of the Act, which has the effect that a person may commit an offence or be liable to a civil penalty if the person contravenes a provision in this Division 4 of Part 2 of Chapter 8 of the Poultry Rules

8-34 Persons who may manufacture, supply or possess official marking devices

Section 8-34 specifies who can manufacture, supply or possess official marking devices for applying official marks. These are:

- an authorised officer or a person acting under the direction of an authorised officer;
- a person designated in an approved arrangement as a person who may manufacture, supply or possess an official marking device, and does so in accordance with the arrangement.
- a person who has been given a written approval by the Secretary to manufacture, supply or possess the official marking device, and does so in accordance with the approval.

These restrictions ensure the security of the devices and preserve the integrity of official marks.

The note following subsection 8-34(1) refers the reader to section 309 of the Act, which deals with directions given by authorised officers.

Subsection 8-34(2) has the effect that the requirements in this section do not apply to an ‘Australian Government’ official mark (as provided by section 8-17).

8-35 Security of official marking devices

Section 8-35 requires a person permitted to possess an official marking device under section 8-34 to store the device securely when it is not being used. This is to avoid unauthorised use of the official marking device.

8-36 Damaged etc. official marking devices

Section 8-36 requires a person (other than an authorised officer) in possession of an official marking device, who becomes aware the device is damaged or destroyed, worn or otherwise unfit for applying an official mark to poultry meat or poultry meat products, to notify an authorised officer in writing as soon as practicable after becoming aware of that fact.

The person must then retain the official marking device in secure place until otherwise directed by an authorised officer. This is to ensure the ability to manufacture official marks is not compromised in any way.

8-37 Records of official marking devices manufactured or supplied

Section 8-37 requires a person (other than an authorised officer) permitted to manufacture or supply official marking devices for use at establishments that are registered for operations to prepare poultry meat or poultry meat products for export to make a daily written record stating:

- each kind of official marking devices manufactured by the person on that day;
- the number of each kind of official marking device manufactured by the person on that day;
- the serial number of each official marking device manufactured by the person on that day.

A written record must also be made stating each day official marking devices were supplied by the person to establishments that are registered for operations to prepare prescribed poultry meat or poultry meat products for export, and how they were transported on each day.

The records provide evidence the manufacturer of official marking devices is satisfying regulatory requirements.

The note following section 8-37 explains to the reader that under section 11-10 of the Poultry Rules, the occupier of the registered establishment must retain each record for at least 3 years.

8-38 Records of official marking devices received, used, damaged, destroyed or returned

Section 8-38 requires the occupier of a registered establishment for operations to prepare prescribed poultry meat or poultry meat products for export to make a written record of the official marking devices that have been:

- received at the establishment;
- used to apply official marks to poultry meat or poultry meat products at the establishment;
- damaged or destroyed at the establishment; or
- returned from the establishment.

The note following section 8-38 explains to the reader that under section 11-10 of the Poultry Rules, the occupier of the registered establishment must retain each record for at least 3 years.

CHAPTER 9—POWERS AND OFFICIALS

Part 1—Audits

Part 1 of Chapter 9 (sections 9-1 to 9-16) deals with matters relating to audits of export operations relating to poultry meat or poultry meat products.

Audits helps retain wide access to overseas export markets by ensuring compliance with export requirements and importing country requirements. Under sections 266 and 267 of the Act, the Secretary may require an audit to be conducted of, respectively, export operations carried out in certain circumstances, or in relation to the performance of functions under the Act. An audit under section 266 may be conducted by an authorised officer or an approved auditor, while an audit under section 267 may be conducted by a Commonwealth authorised officer or a person prescribed by the rules made for the purposes of subsection 267(3).

Division 1—General

9-1 References to audit in this Part

Section 9-1 provides that reference to an audit under Part 1 of Chapter 9 of the Poultry Rules is reference to the following audits under Part 1 of Chapter 9 of the Act:

- an audit in relation to export operations carried out in relation to poultry meat and poultry meat products;
- an audit in relation to certain persons' performance of their functions and exercise of their powers under the Act in relation to poultry meat or poultry meat products. These persons are third party authorised officers, approved auditors and any other person (other than a Commonwealth authorised officer or a State or Territory authorised officer) who performs functions or exercises powers under the Act;
- an audit in relation to compliance by a third party authorised officer or an approved auditor of any conditions they are subject to when performing their functions and exercising their powers in relation to poultry meat or poultry meat products. Such conditions could be contained in their instruments of authorisations to be, for example, an approved auditor.

Division 2—Conduct of audit etc.

9-2 Purpose of this Division

Section 270 of the Act sets out matters relating to the conduct of audits under the Act. Subsection 270(4) of the Act allows the rules to make provision for and in relation to other matters relating to the conduct of audits, and the processes to be followed after an audit has been completed. Subsection 270(5) provides a non-exhaustive list of matters for which the rules may make provision for under subsection 270(4).

Section 9-2 provides that Division 2 of Part 1 (sections 9-2 to 9-5) is made for the purposes of subsections 270(4) and (5) of the Act and makes provision for and in relation to the conduct of an audit, processes for dealing with non-compliance relating to audit requirements, and audit reports. Audits ensure requirements are being met and export conditions are being complied with on an ongoing basis. This provides assurance to trading partners that import requirements are being met.

9-3 Manner in which audit must be conducted

Section 9-3 requires an audit to be conducted as expeditiously as reasonably practicable and in a way that results in minimal interference to the export operations, or the performance of functions or the exercise of powers, to which the audit relates. This minimises the impact on industry, while still ensuring compliance with requirements is being verified.

The note following section 9-3 explains to the reader that under subsection 270(1) of the Act, the Secretary is not required to give notice of an audit.

9-4 Notice of non-compliance with requirements

Section 9-4 specifies what an auditor must do when, in the auditor's opinion following an audit of export operations under section 266 of the Act, there is or has been, a failure (or a combination of failures) that amount to non-compliance with a requirement to which the audit relates.

Subsection 9-4(1) requires that, in such circumstances, the auditor must provide written notification of the auditor's opinion. The notification must be given to the relevant person related to the audit immediately after the audit is completed. The relevant person for each type of audit of export operations is defined in section 269 of the Act. The auditor must also assess whether the failure (or combination of failures) is a critical non-compliance.

Providing notice of failures as soon as the audit is completed ensures transparency in the process and enables remedial action to be undertaken to minimise potential impact on export operations.

The first note following subsection 9-4(1) refers the reader to section 12 of the Act for the definition of **auditor** and clarifies that under the Act, an auditor is an authorised officer or an approved auditor.

The second note refers the reader to section 269 of the Act for who is the **relevant person** for an audit.

Subsection 9-4(2) requires the auditor to notify, in writing, the Secretary if, in the auditor's opinion, the failure (or combination of failures) is a critical non-compliance. The notification must be given immediately after the auditor forms the opinion. This is necessary to ensure the Secretary is aware of the non-compliance and can take the necessary action to minimise impacts on Australia's trading reputation.

Subsection 9-4(3) specifies the failures that are **critical non-compliance** failures. These are a failure (or combination of failures) that:

- results in, or is likely to result in, the export or preparation for export, of poultry meat or poultry meat products as food the integrity of which cannot be ensured; or
- results in, or is likely to result in, the export or the preparation for export, of poultry meat or poultry meat products as food that are not wholesome, not traceable, cannot be recalled if required, do not meet an importing country requirements or are derived from poultry that were not treated humanely when alive or during slaughter; or
- prevents, or is likely to prevent, an accurate assessment of:
 - whether the integrity of the poultry meat or poultry meat products can be ensured;
 - whether the poultry meat or poultry meat products are wholesome, traceable, can be recalled if required, meet an importing country requirement or are derived from poultry that was treated humanely when alive or during slaughter.

These failures may have considerable impact on Australia's trading reputation and may result in impacts on other persons or businesses through action by importing country authorities. It is therefore critical that these non-compliance failures are reported to the Secretary immediately, so necessary action can be implemented to mitigate consequences.

9-5 Audit reports

Section 9-5 sets out the requirements relating to audit reports, including how audit reports are to be provided, what they must entail and what they may also include.

Audits ensure relevant requirements are being met and conditions are being complied with on an ongoing basis. Audits provide assurance to trading partners that their import requirements are being met. The audit report ensures sufficient information is provided to enable an assessment of compliance with requirements.

Subsection 9-5(1) requires an audit report to be made in writing after the audit is completed or ends.

The note following subsection 9-5(1) refers the reader to the definition of **auditor** in section 12 of the Act. An **auditor** is an authorised officer or an approved auditor.

Subsection 9-5(2) specifies that an audit report must include the name of the auditor, the day the audit commenced, the day the audit was completed or ended, the total time spend conducting the audit (in hours), a description of the export operations or persons performing functions or exercising powers under subsection 267(1) of the Act to which the audit relates, and a description of the nature and scope of the audit.

Subsection 9-5(3) requires the audit report to also contain the auditor's opinions regarding whether the audit was satisfactorily completed (or otherwise) before it ended, whether the requirements to which the audit relates are being, or have been, complied with, and the reasons for the opinion.

Subsection 9-5(4) requires all instances of non-compliance with the requirements to which the audit relates to be included in the audit report. The report must describe each failure of compliance (or combination of failures), including whether, in the auditor's opinion, the failure (either by itself or in combination with other failures) amounts to, or has contributed to, critical non-compliance. The report must include the reasons for the auditor's opinions on these matters.

Subsection 9-5(5) specifies that the audit report may also identify any risk of potential non-compliance with a requirement to which an audit may relate and may include recommendations that any of the following actions be taken:

- action to address any non-compliance with a requirement to which the audit relates;
- action to ensure that any such non-compliance does not recur;
- action to address the risk of potential non-compliance with a requirement to which an audit may relate;
- action to assess the effectiveness of an action referred to in subparagraph 9-5(5)(b)(i), (ii) or (iii) (as detailed above).

Subsection 9-5(6) requires the audit report to be given to the Secretary and the relevant person for the audit within 14 business days after the audit has ended. The audit report must be in a manner approved by the Secretary.

The note following subsection 9-5(6) refers the reader to section 269 of the Act for who is the *relevant person* for an audit.

Division 3—Approved auditors

An approved auditor is a person approved by the Secretary under section 273 of the Act to carry out regulatory audits of export operations, including of registered establishments engaged in the preparation or storage and loading of products for export as food. Approved auditors can be engaged by export registered establishments to conduct audits for compliance with legislative and importing country requirements and provide audit reports to the Secretary. The Secretary may, in writing, approve a person, or each person in a specified class of persons, to conduct audits under Part 1 of Chapter 9 of the Act.

9-6 Purpose of this Division

Subsection 273(1) of the Act allows the Secretary to approve a person to conduct audits under Part 1 of Chapter 9 of the Act (approved auditors).

Subsection 273(6) of the Act allows the rules to make provision for and in relation to matters relating to the approval of persons, under subsection 273(1), as approved auditors.

Subsection 273(7) provides a non-exhaustive list of matters that may be the subject of rules made under subsection 273(6).

Section 9-6 provides that Division 3 of Part 1 (sections 9-6 to 9-18) is made for the purpose of subsections 273(6) and (7) of the Act and makes provision for and in relation to matters regarding the approval of individuals to conduct audits.

9-7 Application for approval

Section 9-7 relates to application requirements for an individual to become an approved auditor.

Subsection 9-7(1) provides that an individual may apply to the Secretary for approval under subsection 273(1) of the Act to conduct audits.

Subsection 9-7(2) requires an application to be in a manner and form approved by the Secretary (if any). The application must also include written evidence of the applicant's qualifications, a document detailing the applicant's audit experience, a document setting out procedures for the conduct of audits by the applicant and, if an application fee is prescribed by the *Export Control (Fees and Payments) Rules 2021*, that fee. This information and documentation are necessary to allow the Secretary to decide the application.

Subsection 9-7(3) provides that if the application does not meet the requirements of subsection 9-7(2), the application is taken not to have been made. This means the application will not be considered unless and until all requirements are met.

The requirements for application for approval ensures approved auditors are suitably qualified and have the necessary skills to conduct audits into export operations.

9-8 Secretary must decide whether to approve applicant to conduct audits

Subsection 9-8(1) specifies that once a complete application from a person seeking approval to be an auditor is received, the Secretary must either approve or refuse to approve the applicant to conduct audits.

The note following subsection 9-8(1) explains to the reader that a decision to refuse the application is a reviewable decision under section 11-1 and the Secretary must give the applicant written notice of the decision in accordance with section 382 of the Act.

Subsection 9-8(2) sets out the requirements of which the Secretary must be satisfied before approving an applicant to conduct audits. The Secretary must have regard to any matter they consider relevant, and must be satisfied that the applicant:

- is a fit and proper person (having regard to the matters referred to in section 372 of the Act);
- has the necessary competency (for example, the knowledge, training, skills or experience) to conduct audits;
- is able to conduct audits objectively, independently, fairly and accurately;

- will comply with Division 2 (which deals with non-compliance and audit reports) in relation to audits conducted by the applicant; and
- will comply with procedures for conducting audits that are necessary to ensure that the requirements in paragraphs 9-8(2)(c) and (d) are met and can be accurately assessed.

Subsection 9-8(3) sets out when the Secretary may refuse to approve an applicant to conduct audits. These include where the applicant has a relevant Commonwealth liability that has not been paid, or has provided false, misleading or incomplete information, statements or documents in an application, under the Act or under a prescribed agriculture law.

The note following section 9-8 explains that, under the Act, the Secretary must not approve a person to conduct audits unless satisfied the person satisfies, or will satisfy, certain training and qualification requirements determined by the Secretary under subsection 273(4) of the Act.

9-9 Dealing with applications

Section 9-9 provides that the Secretary may request an applicant to provide further specified information or documents relevant to the application made under section 9-7 for the purpose of making a decision on that application. The request must be in writing, must specify the timeframe to comply and must specify the manner in which the request is to be complied with.

This ensures that the Secretary can efficiently decide an application based on all relevant information or documents.

9-10 Conditions of approval

Subsection 9-10(1) specifies that the approval of an applicant to conduct audits may be subject to any conditions the Secretary considers necessary.

The note following subsection 9-10(1) explains that a decision to approve the application subject to conditions is a reviewable decision under the Act and the Secretary must give the applicant written notice of the decision in accordance with section 382 of the Act.

Subsection 9-10(2) provides that, without limiting subsection 9-10(1), the conditions of an approval to conduct an audit may relate to the scope of audits the auditor is approved to conduct (including by reference to the kind of export operations), aspects of the export operations, or a kind of export operations carried out at a kind of place (for example, a registered establishment). This provides the Secretary with the flexibility to specify the kinds of audits an approved auditor can undertake. It allows the Secretary to limit or broaden the scope of an approved auditor's functions and powers, in line with their experience, qualifications, the kind audit and export operational requirements.

9-11 Notice of decision

Section 9-11 provides that if the Secretary approves an applicant to conduct audits, the Secretary must provide the applicant with a written notice of approval. The notification must include that the applicant is approved to conduct audits, the scope of the audits covered, the date the approval takes effect, that the approval remains in force for 12 months unless revoked earlier under section 9-14 of the Poultry Rules, and any conditions of the approval imposed under section 9-10 of the Poultry Rules.

9-12 Period of effect of approval

Section 9-12 specifies that an approval of an individual to conduct audits under subsection 273(1) of the Act takes effect on the day stated in the notice under section 9-11 of the Poultry Rules and remains in force for 12 months unless revoked earlier under section 9-14. This ensures approved auditors maintain the currency of their qualifications to conduct audits.

9-13 Imposing or varying conditions of approval

Subsection 9-13(1) provides that, if an individual is approved, under subsection 273(1) of the Act, to conduct audits, the Secretary may, if they consider it necessary to do so, impose conditions on the approval or vary the conditions of the approval. A variation of condition may include removing conditions or imposing new conditions.

The note following subsection 9-13(1) explains that a decision to impose conditions or vary the conditions of an approval is a reviewable decision under the Act (see section 11-1 of the Poultry Rules) and the Secretary must give the applicant written notice of the decision in accordance with section 382 of the Act.

Subsection 9-13(2) provides that, if the Secretary imposes conditions on, or varies the conditions of, an approval, the Secretary must notify the individual in writing of the conditions imposed or the varied conditions (including any new conditions), the reason for imposing or varying the conditions, and the date that the conditions or varied conditions take effect.

This ensures that the process is transparent and accountable, and provides the individual with adequate information about the decision to impose or vary the conditions of an approval.

9-14 Revocation of approval

Sections 9-14 sets out the requirements for revoking an approval, granted under section 273 of the Act, of an individual to conduct audits.

Section 9-14 provides that the Secretary can revoke an approval of an individual to conduct audits where the individual requests the revocation or, where the Secretary is satisfied of any of the following:

- the individual is no longer a fit and proper person (having regard to the matters referred to in section 372 of the Act);
- the individual does not have the necessary competency (for example, the knowledge, training, skills or experience) to conduct audits of the kind covered by the approval (including the conditions of the approval);
- the individual failed to show competency in conducting audits;
- an audit conducted by the individual, or an audit report given to the Secretary by the individual, was not objective, independent, fair or accurate;
- an audit conducted by the individual was not completed, and the audit report did not give any reasonable explanation as to why the audit was not completed;
- an audit report given to the Secretary by the individual was incomplete;
- the individual failed to comply with a relevant requirement prescribed by Division 2 of Part 1 of Chapter 9 of the Poultry Rules;
- the individual contravened a condition of the approval;
- the individual made a false, misleading or incomplete statement, or provided false, misleading or incomplete information or documents, in an application for approval, or to the Secretary or Department under the Act or under a prescribed agriculture law, where there were no reasonable grounds to do so.

The note following subsection 9-14(1) explains that a decision to revoke the approval is a reviewable decision under the Act and the Secretary must give the applicant written notice of the decision in accordance with section 382 of the Act.

Subsection 9-14(2) provides that, for the purposes of paragraph 9-14(1)(b) or (c), the Secretary may assess the competency of an approved auditor at any time and in any way the Secretary considers appropriate.

Subsection 9-14(3) provides that, for the purposes of paragraph 9-14(1)(d), the Secretary may consider any interest, pecuniary or otherwise, of the individual that conflict or could conflict with the conduct of an audit by the individual.

The purpose of this section is to ensure the necessary knowledge, training, skills and experience are maintained and that audits conducted are objective, independent and are fair and accurate.

Subsection 9-14(4) requires the Secretary, if they decide to revoke an individual's approval to conduct audits, to give to the individual a written notice stating the approval is to be revoked, the reasons for the revocation and the date the revocation takes effect. This ensures that the process is transparent and accountable, and provides the individual with adequate information about the decision. This requirement does not apply where the revocation is requested by the individual.

9-15 Register of approved auditors

Section 9-15 provides that the Secretary must keep a register of individuals who are approved under subsection 273(1) of the Act to conduct audits. The register may be kept by electronic means, may be kept at a place and in a form that the Secretary determines, and must be publicly accessible. The register must include the names of the individuals and any conditions on their approval to undertake audits.

The purpose of this provision is to ensure transparency and accountability in relation to persons the Secretary approves to undertake audits. It also ensures that all approved auditors are publicly available so that anyone being audited can identify and verify these auditors and the conditions under which they operate. This is necessary as approved auditors perform functions and exercise powers under the Act.

9-16 Fit and proper person test

Subsection 372(1) of the Act sets out which provisions in the Act require the Secretary to comply with the requirements of section 372 of the Act when determining whether a person is a fit and proper person. Paragraph 372(1)(d) allows the rules to provide additional provisions of the Act for which the requirements in section 372 will apply (which includes instruments made under the Act, such as provisions of the Poultry Rules).

Subsection 9-16(1) prescribes, for the purposes of paragraph 372(1)(d) provisions of the Poultry Rules to which the fit and proper person test will apply. These are:

- section 9-8, relating to a decision to approve an individual to conduct audits; and
- section 9-14, relating to a decision to revoke an approval of an individual to conduct audits.

Paragraph 372(2)(e) of the Act requires the Secretary to have regard to whether certain applications by a person, or an associate of the person, have been refused, when determining whether the person is a fit and proper person. Subparagraph 372(2)(e)(v) allows the rules to prescribe any other provision of the Act to be considered for this purpose.

Subsection 9-16(2) prescribes section 9-7 of the Poultry Rules (application by an individual to conduct audits) for the purpose of subparagraph 372(2)(e)(v) of the Act. This has the effect that when determining whether a person is a fit and proper person, the Secretary must consider whether an application under section 9-7 of the Poultry Rules made by the person or an associate of the person was refused.

Paragraph 372(4)(b) of the Act allows the rules to prescribe a person to whom the requirements under subsection 372(2) of the Act, which determine whether a person is a fit and proper person, will apply without reference to an associate of the person.

Subsection 9-16(3) prescribes an approved auditor for the purpose of paragraph 372(4)(b) of the Act. This means the requirements to determine whether an auditor is a fit and proper person under subsection 372(2) of the Act refer only to the auditor and not to an associate of the auditor.

Section 374 of the Act relates to the notification that a person has been convicted of an offence or order to pay a pecuniary penalty. Paragraph 374(1)(g) provides that section 374 applies to any other person prescribed by the rules, and who carries out export operations or performs functions or duties or exercises powers under the Act.

Subsection 9-16(4) prescribes, for the purposes of paragraph 374(1)(g) of the Act, an approved auditor. This has the effect that an approved auditor is required to notify the Secretary of any conviction of offence or order to pay a pecuniary penalty for a contravention involving fraud or dishonesty in accordance with subsection 374(4) of the Act, or in relation to an associate of the person under subsection 374(5) of the Act. Failure to do so is a contravention of a civil penalty provision under subsection 374(6) of the Act.

Prescribing these provisions for the fit and proper person test is necessary to ensure that a prospective auditor is of a suitable character to conduct audits. Audits are necessary to establish whether export operations comply with the Act and the requirements of importing countries. Audits also involve access to business premises where commercially sensitive operations are conducted. It is essential that approved auditors are trustworthy and undertake audits with integrity. For these reasons, the fit and proper test applies when deciding whether to approve an individual to conduct audits and when deciding whether to revoke an approval to conduct audits.

Part 2—Assessments

An assessment of goods may be carried out for the purpose of deciding whether to issue a government certificate (paragraph 68(c) of the Act) or and export permit (paragraph 241(c) of the Act). The purpose of the assessment is to verify:

- the requirements of the Act have been or will be complied with before the goods are imported into the importing country;
- importing country requirements have been, or will be, met before the goods are imported into the importing country; or
- a matter stated, or to be stated, in a government certificate in relation to the goods is true and correct.

9-17 Circumstances in which assessment may be required or permitted

Subsection 277(1) of the Act provides that an assessment of goods may be carried out under Part 2 of Chapter 9 of the Act only if the assessment is required or permitted to be carried out under the Act. Subsection 277(2) of the Act allows the rules to prescribe circumstances in which the Secretary may require or permit an assessment of goods to be carried out under Part 2 of Chapter 9 of the Act.

Section 9-17 is made for the purposes of subsection 277(2) of the Act and provides the Secretary may require or permit an assessment of prescribed poultry meat or poultry meat products to be carried out at any stage of export operations to prepare the prescribed poultry meat or poultry meat products for export if the Secretary considers it necessary to do so to ensure that one or more objects of the Act will be met in relation to the poultry meat or poultry meat products. This provides the Secretary with flexibility to determine when it is necessary for an assessment of prescribed poultry meat or poultry meat products to be carried out. This reflects the possibility that the circumstances requiring an assessment are likely to change from time to time and may need to commence at short notice.

The assessment will need to be carried out by an assessor who is an authorised officer.

The note following section 9-17 refers the reader to the definition of *assessor* in section 12 of the Act and clarifies that for an assessment of prescribed poultry meat or poultry meat products, the assessor is an authorised officer whose functions and powers include carrying out assessments of prescribed poultry meat or poultry meat products.

Part 3—Powers of the Secretary

An authorised officer is able to perform a range of export functions on behalf of the Department. Authorised officers play an important role in ensuring the risk free, safe and trusted export of a variety of commodities, which helps maintain Australia's reputation as a trusted exporter of quality goods.

9-18 Decisions that may be made by operation of computer program

Subsection 286(1) of the Act allows the Secretary to arrange for the use, under the Secretary's control, of computer programs for making certain decisions under the Act. Subsection 286(2) allows the rules to prescribe the kinds of decisions that may be made by the operation of a computer program, the persons or bodies that may use such a computer program, and the conditions of that use.

Subsection 9-18(1) is made for the purpose of subsection 286(2) of the Act and provides that the following decisions may be made by a computer program (an *authorised computer program*) under an arrangement made under subsection 286(1) of the Act in relation to poultry meat or poultry meat products:

- a decision under paragraph 67(1)(a) of the Act to issue a government certificate; and
- a decision under paragraph 225(1)(a) of the Act to issue an export permit.

Enabling the Secretary to prescribe decisions which may be made by computer programs will provide flexibility in relation to the use of computer programs as there are changes in technology. Allowing computer programs to make certain decisions will also provide administrative efficiency. An advantage of allowing a computer program to issue government certificates and export permits is that decisions are made faster, are not limited to being made during business hours, and are more accurate and consistent.

It is appropriate to enable a computer program to issue a government certificate because the decision under paragraph 67(1)(a) of the Act is based on objective criteria and would not require the computer program to weigh up discretionary factors. Only a decision to issue a certificate is prescribed for the purposes of the Poultry Rules, and any decision to refuse to issue, including the consideration of any discretionary factors, would be made by a human decision maker.

It is appropriate to enable a computer program to issue an export permit as the decision under paragraph 225(1)(a) is based on objective criteria and does not require the computer program to weight up discretionary factors. Only a decision to issue an export permit is prescribed for the purposes of the Poultry Rules and any decision to refuse to issue a permit, including the consideration of any discretionary factors, would be made by a human decision maker.

Under subsection 286(3) of the Act, the Secretary is required to take all reasonable steps to ensure decisions made by a computer program under the arrangement are correct. If the Secretary is satisfied that the decision made by the operation of the computer program is incorrect, the Secretary may make a decision in substitution for that made by the computer program (subsection 286(5)).

Paragraph 286(2)(b) of the Act allows the rules to prescribe the persons or bodies that may use computer programs under an arrangement in subsection 286(1).

Subsection 9-18(2) is made for the purposes of paragraph 286(2)(b) of the Act and details who may use an authorised computer program if the Secretary has given them a unique identifier to access the computer program. These persons are:

- the occupier of a registered establishment where operations to prepare poultry meat or poultry meat products for export are carried out;
- the holder of an approved arrangement for operations to prepare poultry meat or poultry meat products for export at a registered establishment;
- an exporter of poultry meat or poultry meat products;
- a person who provides services to, and is authorised in writing by, the occupier, holder or exporter to use the computer program to make the decision;
- an authorised officer;
- an APS employee in the Department;
- a person performing services for the Department under a contract.

This ensures access to the computer program is only by those who require access to perform their functions.

Paragraph 286(2)(c) of the Act allows the rules to prescribe the conditions of the use of computer programs under an arrangement in subsection 286(1).

Subsection 9-18(3) is made for the purposes of paragraph 286(2)(c) of the Act and sets the conditions for use of the computer program by the persons listed under subsection 9-18(2). It provides that a person who has access to and uses the authorised computer program must be satisfied on reasonable grounds that the information entered into the computer program is true and correct and is accurately entered. This is to avoid, as far as practicable, incorrect or incomplete information being entered into the computer program which may result in an incorrect decision.

Part 4—Authorised officers

Division 1—Third party authorised officers

9-19 Requirement to be third party authorised officer—fit and proper person etc.

Subsection 291(7) of the Act allows the Secretary to authorise a person who is not an officer or employee of a Commonwealth body or a State or Territory body to be a third party authorised officer if the requirements of that subsection are met. Paragraph 291(7)(c) allows the Secretary to authorise a third party authorised officer if any other requirements prescribed by the rules is, or has been met.

Section 9-19 is made for the purposes of paragraph 291(7)(c) of the Act and sets out an additional requirement that a person be a fit and proper person (having regard to the matters referred to in section 372 of the Act) in order to be authorised to be a third party authorised officer whose functions and powers will include carrying out specialised inspection services in relation to poultry meat or poultry meat products. Authorised officers perform functions or duties or exercise powers under the Act and the Poultry Rules.

Third party authorised officers may have access to business premises where commercially sensitive operations are conducted. It is essential that they are trustworthy and undertake their roles with integrity. For these reasons, it is appropriate that an individual is required to be a fit and proper person to be authorised to perform functions and exercise powers in relation to prescribed poultry meat and poultry meat products.

Subsection 372(1) of the Act sets out which provisions in the Act require the Secretary to comply with the requirements of section 372 when determining whether a person is a fit and proper person. Paragraph 372(1)(d) allows the rules to provide additional provisions of the Act for which the requirements in section 372 will apply (which includes instruments made under the Act, such as provisions of the Poultry Rules).

Subsection 9-19(2) is made, for the purposes of paragraph 372(1)(d) of the Act and prescribes subsection 9-19(1) as a provision to which the fit and proper person test applies. This means the fit and proper person requirements in section 372 of the Act apply in relation to a third party authorised officer. This is necessary to ensure that a prospective third party authorised officer is of a suitable character to perform functions or exercise powers under the Act.

Paragraph 372(2)(e) of the Act requires the Secretary to have regard to whether certain applications by a person, or an associate of the person, have been refused, when determining whether the person is a fit and proper person. Subparagraph 372(2)(e)(v) allows the rules to prescribe any other provision of the Act to be considered for this purpose.

Subsection 9-19(3) is made for the purposes of subparagraph 372(2)(e)(v) of the Act, and prescribes subsection 291(3) of the Act (application by person to be third party authorised officer whose functions and powers will include carrying out specialised inspection services in relation to prescribed poultry meat or poultry meat products). This means that in determining whether applicant is a fit and proper person, the Secretary must have regard to whether the person, or an associate of the person, has made an application to be a third party authorised officer which has been refused. It is important the Secretary consider the reasons for refusing an application to be a third party authorised officer in determining whether an applicant is a fit and proper person.

Paragraph 372(4)(b) of the Act allows the rules to prescribe a person to whom the requirements under subsection 372(2) of the Act, which determine whether a person is a fit and proper person, will apply without reference to an associate of the person.

Subsection 9-19(4) is made for the purposes of paragraph 372(4)(b) of the Act and prescribes a person who is a third party authorised officer who may perform functions and exercise powers in relation to poultry meat or poultry meat products. This means the requirements in subsection 372(2) of the Act regarding the mandatory considerations when determining whether a third party authorised officer whose functions and powers include carrying out specialised inspection services in relation to poultry meat or poultry meat products is a fit and proper person refers only to the third party authorised officer and not to an associate.

Section 374 of the Act relates to the notification that a person has been convicted of an offence or ordered to pay a pecuniary penalty. Paragraph 374(1)(g) provides that section 374 applies to any other person prescribed by the rules, and who carries out export operations, or performs functions or duties or exercises powers under the Act.

Subsection 9-19(5) is made for the purposes of paragraph 374(1)(g) of the Act and prescribes a third party authorised officer whose functions and powers include carrying out specialised inspection services in relation to poultry meat or poultry meat products. This means that such a person is required to notify the Secretary of any conviction of offence or order pay a pecuniary penalty for a contravention involving fraud or dishonesty for that person (under subsection 374(4) of the Act) or an associate (under subsection 374(5) of the Act). Failure to comply with this requirement is a contravention of a civil penalty provision under subsection 374(6) of the Act.

Subsection 9-19(6) provides that, for the purposes of section 9-19, a ***specialised inspection service*** in relation to poultry meat and poultry meat products is an inspection for the purpose of ensuring that the requirements of the Act have been or will be complied with, or importing country requirements are or will be met in relation to trade descriptions applied, or to be applied, to poultry meat or poultry meat products.

Division 2—Functions and powers

9-20 Purpose of this Division

Section 300 of the Act provides that the rules may confer functions or powers on authorised officers, or a class of authorised officers, that are necessary or convenient to be performed or exercised for the purposes of achieving the objects of the Act.

Section 9-20 provides that Division 2 (sections 9-20 to 9-35) is made for the purposes of section 300 of the Act and confers functions and powers on authorised officers that are necessary or convenient for the purposes of achieving the objects of the Act in relation to prescribed poultry meat or poultry meat products for export. An authorised officer may only perform functions or exercise powers conferred on them by the Act that are specific in their instrument of authorisation.

The note following section 9-20 explains to the reader that under subsection 301(1) of the Act an authorised officer can only perform the functions or powers that are specified in that officer's instrument of authorisation.

9-21 Applying admission decisions

Subsection 9-21(1) provides an authorised officer may apply decisions in accordance with the Australian Poultry Meat Standard to poultry that are intended to be slaughtered at a registered establishment. This power is, however, subject to the limitation at subsection 9-21(3).

Subsection 9-21(2) provides an authorised officer may carry out inspections of poultry intended to be slaughtered at a registered establishment before applying a decision referred to in subsection 9-21(1).

The first note following subsection 9-21(2) refers the reader to Appendix B of the Australian Poultry Meat Standard.

The second note following subsection 9-21(2) refers the reader to section 9-25 of the Poultry Rules which has the effect that an authorised officer may apply a decision subject to conditions and may vary an applied decision.

Subsection 9-21(3) applies if an animal has been, or may have been:

- used for trials or experiments to evaluate drugs, chemicals, biological substances or processes of genetic manipulation; or
- treated with, or exposed to, a new or unidentified drug, chemical or biological substance.

In these circumstances, an authorised officer must not decide to admit the animal to a registered establishment for slaughter unless the admission is subject to conditions and the Secretary has notified the authorised officer that the animal may be admitted subject to those conditions. This is necessary to ensure the wholesomeness of the prescribed poultry meat or poultry meat products by allowing the Secretary to consider the risks associated with admitting the animal to a registered establishment for slaughter.

9-22 Inspections of poultry for slaughter and applying ante mortem dispositions

Section 9-22 permits an authorised officer to carry out inspections of poultry that are intended for slaughter at registered establishments. After the inspection of the animal, the authorised officer must apply dispositions in accordance with the Australian Poultry Meat Standard or Part 4 of Chapter 9 of the Poultry Rules to the animal.

The conferral of these functions is necessary to allow authorised officers to ensure the wholesomeness and integrity of prescribed poultry meat or poultry meat products.

The first note following section 9-22 refers the reader to Appendix B of the Australian Poultry Meat Standard.

The second note following section 9-22 refers the reader to section 9-25 of the Poultry Rules which has the effect that an authorised officer may apply a disposition subject to conditions and may vary an applied decision or disposition. For example, a disposition may be varied if, after a post-mortem inspection, poultry meat or poultry meat products deteriorate.

9-23 Inspections of carcasses and carcase parts and applying post-mortem dispositions

Subsection 9-23(1) provides that an authorised officer may inspect carcasses and carcase parts and, after carrying out an inspection, must apply a disposition to the carcass or carcase parts in accordance with subsections 9-23(2) and (3). These functions assist authorised officers to ensure the wholesomeness and integrity of carcasses and carcase parts for export.

The note following subsection 9-23(1) notifies the reader that an authorised officer may apply a disposition under this section subject to conditions, and vary a disposition applied, under this section in accordance with section 9-25 of the Poultry Rules.

Subsection 9-23(2) details the dispositions which must be applied to carcasses. The authorised officer must apply one of the following:

- passed for human consumption;
- passed for human consumption and unsuitable for export;
- passed for human consumption and unsuitable for export to a suitable country;
- retained for final disposition;
- unfit for human consumption and may be recovered for animal food;
- unfit for human consumption and may be recovered for or pharmaceutical material; or
- condemned.

Subsection 9-23(3) sets out the dispositions that must be applied to carcase parts. The authorised officer must apply one of:

- the dispositions listed under subsection 9-23(2) (listed above); or
- derived from poultry the carcase of which is passed for human consumption and the carcase parts require further treatment to be fit for human consumption.

Post-mortem inspection covers the inspection of carcasses and parts of meat used for human food. The purpose of the post-mortem inspection is to protect public health by ensuring the carcasses and carcase parts are wholesome, not adulterated, and are properly marked, labelled, and packaged. This means that any carcasses or carcase parts that are unwholesome or adulterated, and thereby unfit for human food, do not enter trade. It is important this is expressly provided for in the rules given the significance of this kind of inspection.

9-24 Inspections of poultry meat and poultry meat products and applying dispositions

Section 9-24 permits authorised officers to inspect poultry meat or poultry meat products. After the inspection, the authorised officer must apply a disposition to the goods. The dispositions that must be applied are one of:

- the dispositions listed under subsection 9-23(2); or
- unsuitable for export as food; or
- unsuitable for export as food to a specified country.

This assists authorised officers in ensuring the wholesomeness and integrity of poultry meat and poultry meat products for export for a specific purpose and to a specific destination.

The first note following section 9-24 refers the reader to section 9-25 of the Poultry Rules which has the effect that an authorised officer may apply a disposition subject to conditions, and may vary an applied disposition. For example, a disposition may be varied if, after a post-mortem inspection, poultry meat or poultry meat products deteriorate.

The second note following section 9-24 refers the reader to section 9-30 of the Poultry Rules, which deals with powers where the integrity of poultry meat or poultry meat products may not be able to be ensured.

9-25 Applying decisions or dispositions subject to conditions and variation

Subsection 9-25(1) provides that an authorised officer may apply a decision or disposition referred to below subject to any conditions necessary to achieve the objects of the Act. The relevant decisions or dispositions are:

- a decision referred to in subsection 9-21(1); or
- a disposition referred to in paragraph 9-22(b), subsections 9-23(2) or 9-23(3) or paragraph 9-24(b).

Subsection 9-25(2) requires an authorised officer to specify any conditions to be applied at the time the decision or disposition is applied.

Subsection 9-25(3) permits an authorised officer to vary decisions or dispositions, or the conditions to which a decision or disposition is subject, if they reasonably believe the circumstances that led to the application of the decision or disposition have changed. This flexibility is necessary to allow for changes in circumstances where an alternative decision, disposition or condition would be appropriate.

9-26 Stopping chain of operations temporarily or controlling rate of operations

Section 9-26 permits an authorised officer to temporarily stop the chain of operations, or control the rate of operations, being carried out in relation to an animal, carcasses or carcase parts, or poultry meat or poultry meat products in certain circumstances.

These circumstances are if the authorised officer reasonably believes it is necessary for the purposes of:

- accurately inspecting or applying a disposition or decision to poultry (under sections 9-21 or 9-22);
- accurately inspecting or applying a disposition to carcasses or carcase parts (under section 9-23);
- accurately inspecting or applying a disposition to poultry meat or poultry meat products (under section 9-24); or
- performing any other functions necessary to achieve the objects of the Act in relation to the animal, carcasses or carcase parts, or poultry meat or poultry meat products.

This is necessary to ensure that poultry meat or poultry meat products are wholesome and their integrity can be ensured.

9-27 Inspecting establishments and securing areas, facilities, equipment or other things

Subsection 9-27(1) allows an authorised officer to inspect:

- an establishment (or any area of an establishment);
- any facilities or equipment or other things at the establishment; and
- any service provided at the establishment

where operations are being carried out to prepare or transport poultry meat or poultry meat products for export. This does not give an authorised officer power of entry. Entry to the establishment will need to be exercised in accordance with the powers provided for in the Act.

The note following subsection 9-27(1) provides examples of other things which may be at an establishment are vehicles or other conveyances.

Subsection 9-27(2) allows an authorised officer to secure an area of an establishment or facilities or equipment or any other thing at the establishment that has been, or is to be, inspected under subsection 9-27(1), if the authorised officer considers it necessary to do so in order to enable functions to be performed, or powers to be exercised, under the Act.

The area, facilities or equipment or other thing is to be secured by attaching or applying an identification tag or similar means of identification. This power is necessary to ensure all persons at the establishment are aware of areas that are secured to allow authorised officers to exercise their powers and functions (including to conduct inspections).

Subsection 9-27(3) requires the identification tag or other means of identification used under subsection 9-27(2) to be in a form approved by the Secretary. This ensures there is consistency with the means of identifying secured areas.

Subsection 9-27(4) specifies that only an authorised officer or a person being directed by an authorised officer may remove the identification tag or other means of identification. This ensures the identification is only removed when the area is no longer required to be secured.

The note following section 9-27(4) refers the reader to section 309 of the Act, which deals with how a direction may be given by an authorised officer.

9-28 Securing and identifying establishment or conveyance etc.

Subsection 9-28(1) specifies the things and areas, including establishments or conveyances, which an authorised officer may secure, or retain and identify, for the purpose of carrying out an assessment or inspection, or applying a treatment or a disposition. These are:

- a thing found at an establishment that is used, or is apparently used, for operations to prepare poultry meat or poultry meat products;
- a thing found in or on a conveyance that is used, or apparently used, to transport poultry meat or poultry meat products;
- an area of a registered establishment that is used or apparently used, for operations to prepare poultry meat or poultry meat products, including any facilities or equipment or services provided in that area;
- an establishment (other than a registered establishment) that is used, or apparently used, for operations to prepare poultry meat or poultry meat products;
- a conveyance that is used, or apparently used, to transport poultry meat or poultry meat products.

These functions are necessary to ensure that prescribed goods for export are wholesome and their integrity can be ensured.

Subsection 9-28(2) requires a thing, area, establishment or conveyance referred to in subsection 9-28(1) to be identified by attaching or applying an identification tag or similar means of identification. This is necessary to ensure that all persons at the establishment are aware of the things and areas that are secured to allow authorised officers to deal with things or the area.

Subsection 9-28(3) provides that the identification tag or other means of identification must be in a form approved by the Secretary. This ensures there is consistency with the means of identifying secured areas.

Subsection 9-28(4) specifies that only an authorised officer or a person acting in accordance with a direction given by an authorised officer may remove the identification tag or other means of identification. This ensures the identification is only removed when the thing or area is no longer being dealt with by an authorised officer.

The note following section 9-28(4) refers the reader to section 309 of the Act, which deals with how a direction may be given by an authorised officer.

9-29 Interference with identified establishment or conveyance etc.

Section 9-29 provides that only an authorised officer or a person acting in accordance with a direction given by an authorised officer can interfere with or use any area, thing, establishment or conveyance, or move a thing or conveyance identified under section 9-28.

The note following section 9-29 refers the reader to section 309 of the Act for how a direction may be given by an authorised officer.

9-30 Powers where integrity of prescribed poultry meat or poultry meat products may not be able to be ensured

Section 9-30 sets out powers that may be exercised by authorised officers when the integrity of prescribed poultry meat or poultry meat products may not be able to be ensured.

Subsection 9-30(1) permits an authorised officer to apply a disposition of unsuitable for export as food or unsuitable for export as food to a specified country, to prescribed poultry meat or poultry meat products if they reasonably believe the integrity of the prescribed poultry meat or poultry meat products cannot be ensured.

The first note following subsection 9-30(1) provides an example of a situation where the authorised officer may have been notified under section 5-30 of the Poultry Rules that the integrity of the prescribed poultry meat or poultry meat products cannot be ensured.

The second note following subsection 9-30(1) explains that, under subsection 305(1) of the Act, the authorised officer may also give a direction to the holder of an approved arrangement.

Subsection 9-30(2) provides a non-exhaustive list of circumstances on which an authorised officer may reasonably believe the integrity of the prescribed poultry meat or poultry meat products cannot be ensured. These circumstances are:

- where a trade description that does not comply with section 8-6 of the Poultry Rules (dealing with general requirements for trade descriptions), or that has been altered or interfered with in contravention of the Act, has been applied to the prescribed poultry meat or poultry meat products;
- where a part of a trade description has been applied to the prescribed poultry meat or poultry meat products in a language other than English and that part is inconsistent with the part that is in English;
- where an official mark, or a resemblance of an official mark, that has been applied to the prescribed poultry meat or poultry meat products does not meet the applicable requirements in Chapter 8 of the Poultry Rules (including in respect of its application, alteration or interference, or removal or defacement);
- where there is non-compliance with conditions of the approved arrangement in relation to poultry meat or poultry meat products in circumstances where the condition should have been complied with before the integrity of the poultry meat or poultry meat products was called into question.

The first note following section 9-30 refers the reader to the definition of *applied*, in relation to an official mark, in section 8-19 of the Poultry Rules.

The second note following section 9-30 refers the reader to the definition of *applied*, in relation to a trade description, in section 247 of the Act.

The third note following section 9-30 refers the reader to Divisions 4 to 7 of Part 2 of Chapter 5 of the Poultry Rules, which deals with conditions of approved arrangements relating to trade descriptions, official marks, segregation, identification, security, traceability, integrity and transfers.

9-31 Giving certificate of condemnation

Section 9-31 sets out when an authorised officer may give a certificate of condemnation for poultry, or a carcase or carcase. A certification of condemnation may be given if:

- the poultry, or carcase or carcase part, has been condemned at a registered establishment; and
- the holder of the approved arrangement covering export operations carried out in relation to the poultry, or carcase or carcase part, at the registered establishment gives the authorised officer a written request for the certificate within 30 days after the poultry, carcase or carcase part is condemned; and
- the authorised officer is satisfied that the holder of the approved arrangement has records that enable the authorised officer to verify the ownership of the poultry, carcase or carcase part.

A certificate of condemnation certifies that the animal, or a carcase or carcase parts are not fit for human consumption. This power is necessary so the holder can deal with the condemned animal, carcase or carcase part by disposing of it.

Division 3—Directions to deal with non-compliance with the Act etc.

9-32 Other grounds for giving direction

Subsection 305(1) of the Act specifies the person to whom an authorised officer may give a direction under the Act to deal with non-compliance, and the grounds for which the direction may be given. Item 8 of the table in subsection 305(1) allows the rules to prescribe additional persons and grounds for direction to those prescribed persons.

Section 9-32 is made for the purposes of item 8 in the table in subsection 305(1) and specifies additional persons in relation to prescribed poultry meat or poultry meat products who may be given a direction by an authorised officer to deal with non-compliance, and the grounds under which a direction may be given. Persons that may be given directions to deal with non-compliance are listed in column 1 of the table and the grounds for giving the directions are in column 2 of the table.

The additional persons to whom an authorised officer may give a direction are applicants and holders of government certificate and export permits for prescribed poultry meat or poultry meat products. The relevant grounds for giving a direction to such persons generally relate to:

- the poultry meat or poultry meat products not complying, or not likely to comply, with the Act; or
- the poultry meat or poultry meat products not meeting, or not likely to meet, a relevant importing country requirement; or
- the poultry meat or poultry meat products not being wholesome, deteriorating; or
- where the integrity of the poultry meat or poultry meat products cannot be ensured.

Issuing directions enables authorised officers to deal with prescribed poultry meat and poultry meat products that may affect Australia's trading reputation or may not meet importing country requirements.

Division 4—Miscellaneous

9-33 Circumstances in which identity card need not be carried

Section 306 of the Act deals with identity cards. Subsection 306(5) provides that an authorised officer or approved auditor need not carry an identity card in the circumstances prescribed by the rules.

Section 9-33 is made for the purposes of subsection 306(5) of the Act and provides that an authorised officer or approved auditor is not required to carry an identity card at an establishment, or part of an establishment, where it would be unsafe or unhygienic to do so, or where there is a risk of the card or the poultry meat or poultry meat products at the establishment being contaminated.

CHAPTER 10—COMPLIANCE AND ENFORCEMENT

10-1 Samples taken in exercising monitoring or investigation powers

Section 326 of the Act triggers the standard suite of monitoring powers in Part 2 of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act) for the purposes of the Act. Section 327 provides for additional monitoring powers on top of the standard monitoring powers. Those additional monitoring powers are taken to be monitoring powers under Part 2 of the Regulatory Powers Act.

Section 329 of the Act triggers the baseline investigation powers in Part 3 of the Regulatory Powers Act for the purposes of the Act. Section 330 of the Act provides for additional investigation powers on top of the basic investigation powers. Those additional investigation powers are taken to be investigation powers under Part 3 of the Regulatory Powers Act.

One of the additional monitoring and investigation powers provided by sections 327 and 330 of the Act is the power to take, test and analyse samples of any thing on premises entered under Parts 2 or 3 of the Regulatory Powers Act.

Section 10-1 provides requirements for dealing with a sample under paragraph 327(2)(a) and subsection 330(2) of the Act. The sample must be identified with a mark or tag and kept in the custody or control of an authorised officer until whichever of the listed events occurs first, in accordance with the Act. The listed events are where the sample is:

- destroyed during testing or analysis in accordance with section 412 of the Act; or
- given to an analyst appointed under section 413 of the Act; or
- otherwise disposed of.

10-2 Dealing with things seized in exercising investigation powers

Section 10-2 sets out the requirements for dealing with a thing seized from premises entered by an authorised officer under an investigation warrant or under subsection 347(1) of the Act (where the authorised officer has reasonable grounds for suspecting there may be a particular thing on the premises that relates to an offence provision or a civil penalty provision).

The seized thing must be identified with a mark or tag and kept in the custody or control of an authorised officer until whichever of the following listed events occurs first. The listed events are where the thing is:

- given to an analyst appointed under section 413 of the Act; or
- destroyed during testing or analysis in accordance with section 412 of the Act; or
- forfeited in accordance with the subsection 416(1) of the Act; or
- destroyed or otherwise disposed of in accordance with section 418 of the Act; or
- returned or disposed of in accordance with, respectively, subsection 66(4) or section 68 of the Regulatory Powers Act.

The note following section 10-2 refers the reader to section 347 of the Act, which deals with entering premises without a warrant.

CHAPTER 11—MISCELLANEOUS

Part 1—Review of decisions

11-1 Reviewable decisions

Section 381 of the Act sets out the decisions under the Act that are *reviewable decisions* and who can seek a review of such decisions (the *relevant person*). A reviewable decision can be reviewed on its merits internally and, in certain circumstances, externally by the Administrative Appeals Tribunal.

Subsection 381(2) of the Act allows the rules to prescribe additional decisions to be reviewable decisions under the Act, and the relevant person for such decisions.

Section 11-1 is made for the purposes of subsection 381(2) of the Act and details the decisions made under the Poultry Rules that are reviewable decisions. These decisions relate to the approval of a person to conduct audits and carry out assessments.

The specified relevant person may apply in writing for review of these decisions. Section 383 of the Act sets out the process for internal review of reviewable decisions, other than decisions made by the Secretary personally. The review will be conducted by the Secretary or a delegate of the Secretary who has not been previously involved and who is senior to the original decision-maker. The Secretary or their delegate may affirm the decision, vary the decision, or set the decision aside and substitute a new decision. Review by the Administrative Appeals Tribunal is set out in section 385 of the Act.

Reviewable decisions are in column 1 of the table in section 11-1, the provisions under which the reviewable decision is made is in column 2 of the table and the relevant person for the decision is in column 3 of the table.

Prescribing the decisions and relevant persons is necessary to allow for review consistent with the Government's policy that an administrative decision that is likely to affect the rights or interests of an individual should be reviewable on its merits, unless to do so would be inappropriate or there are factors justifying the exclusion of merits review.

Part 2—Records

Retention of records is necessary for monitoring compliance with importing country requirements and government or industry standards. Records may also be relevant in relation to the traceability of goods if there is a need to recall those goods. Retaining records is essential for accountability and enables oversight of the export supply chain.

11-2 Purpose of this Part

Section 408 of the Act deals with requirements to retain records. Subsection 408(1) allows the rules to make provision for and in relation to requiring records to be retained by any of the following (relevantly):

- a person who carries out, or has carried out, export operations in relation to prescribed goods;
- a person who manages or controls, or who has managed or controlled, export operations at a registered establishment;
- a person who manages or controls, or has managed or controlled, export operations in accordance with an approved arrangement;
- a person who carries out, or has carried out, export operations in relation to non-prescribed goods in relation to which an application for a government certificate has been made or a government certificate has been issued.

Subsection 408(2) sets out a non-exhaustive list of matters that may be the subject of rules made under section 408.

Section 11-2 provides that Part 2 of Chapter 11 of the Poultry Rules (sections 11-2 to 11-11) is made for the purposes of subsections 408(1) and (2) of the Act and make provision for and in relation to requiring records to be retained in relation to poultry meat or poultry meat products.

The note following section 11-2 alerts the reader that a person may commit an offence of strict liability if the person is required to make a record in accordance with rules made under section 408 of the Act and does not comply.

11-3 General requirements for records

Section 11-3 sets out the general requirements for records required to be retained under Part 2 of Chapter 11 of the Poultry Rules in relation to poultry meat or poultry meat products.

Subsection 11-3(1) requires records to be in English, be dated, accurate, legible and able to be audited. In addition, if the record was required to be in another language to meet importing requirements, it must also be kept in that other language (in addition to the English record).

Subsection 11-3(2) specifies that a person is considered to have complied with a requirement to retain a record under Part 2 if they have retained a copy of a document where the original version was given to another person, as required under a Commonwealth or State or Territory law, or in accordance with ordinary commercial practice.

11-4 Government certificates

Section 11-4 requires a person to whom a government certificate in relation to poultry meat or poultry meat products is issued, to retain the certificate in a secure place when it is not being used.

Subsection 11-4(2) provides that this requirement does not apply in relation to a government certificate issued by electronic means.

This ensures, for example, that a government certificate is not misused or lost.

11-5 Export permits

Section 11-5 requires the person to whom an export permit for prescribed poultry meat or poultry meat products is issued, to retain the permit in a secure place when it is not being used.

Subsection 11-5(2) provides that this requirement does not apply in relation to an export certificate issued by electronic means.

This ensures, for example, that an export permit is not misused or lost.

11-6 Records to be retained by exporter

Section 11-6(1) and (2) require an exporter of prescribed poultry meat or poultry meat products to retain the following records for at least 2 years from the day the record is made or when it comes into their possession:

- each declaration given to the exporter under subsection 5-13(2) of the Poultry Rules;
- each application by the exporter for an export permit for prescribed poultry meat or poultry meat products; and
- any other document that is made by or comes into the exporter's possession that is relevant to showing whether they have complied with the applicable requirements of the Act.

11-7 Records to be retained by occupier of registered establishment

Section 11-7 requires the occupier of a registered establishment that is registered for a kind of export operations in relation to prescribed poultry meat or poultry meat products to retain each document they make or that comes into their possession and that is relevant to showing whether they have complied or are complying with the Act (including the conditions of the establishment's registration).

Subsection 11-7(2) provides that the occupier of a registered establishment must also retain all records of ante-mortem inspections and post-mortem inspections of carcasses or carcass parts carried out at the establishment.

Subsection 11-7(3) provides that these records must be retained for at least 2 years starting from the day the record is made or when it comes into their possession (as the case may be).

11-8 Records to be retained by holder of approved arrangement

Section 11-8 requires the holder of an approved arrangement for a kind of export operations in relation to prescribed poultry meat or poultry meat products to retain each document they make or that comes into their possession relevant to showing compliance with the applicable requirements of the Act, the approved arrangement and the conditions of the approved arrangement.

The note following subsection 11-8(1) of the Act provides an example of records that must be retained under this section, being records under subsection 5-35(2) (verification of compliance), 5-36(2) action to address non-compliance) and 5-73(3) (internal audits and managements reviews) to be retained.

Subsection 11-8(2) provides that the holder of the approved arrangement must retain each record for at least 2 years starting on the day the record is made or when it comes into the holder's possession (as the case may be).

11-9 Records relating to official marks

Section 11-9 requires the holder of an approved arrangement that covers the manufacture or supply of official marks for use at establishments that are registered for operations to prepare poultry meat or poultry meat products for export to retain each record made under section 8-28 (official marks manufactured or supplied) and 8-29 (official marks received, applied, removed, defaced, destroyed or returned) of the Poultry Rules for at least 3 years after making the record.

11-10 Records relating to official marking devices

Section 11-10 sets out that a person who is required to make a record under sections 8-37 (official marking devices manufactured or supplied) or 8-38 (official marking devices received, used, damaged, destroyed or returned) of the Poultry Rules must retain each record for at least 3 years after making the record.

11-11 Records must not be altered or defaced during retention period

Subsection 11-11(1) provides that records that are required to be maintained under Part 2 of Chapter 11 of the Poultry Rules must not be altered or defaced during the period they are required to be kept (the *retention period*).

However, subsection 11-11(2) provides that records can be marked up or have notations added to them in accordance with ordinary practice.

Subsection 11-11(3) provides that where a record is altered or defaced in accordance with ordinary practice, the person responsible for keeping the record must also retain additional documents. These are any documents that come into the person's possession or are created by the person, which shows how the original record was altered or defaced.

Part 3—Samples

11-12 Storage of samples

Section 411 of the Act allows the rules to make provision for and in relation to the storage of samples that may be tested or analysed under the Act.

Subsection 11-12(1) is made for the purposes of section 411 of the Act and requires samples to be held under conditions that are unlikely to affect the results of tests or analysis of the samples. This is necessary to preserve the integrity of samples that may be used for regulatory purposes.

Subsection 11-12(2) provides that the requirement in subsection 11-12(1) does not apply in the context of samples that may be tested under Chapter 10 of the Act (compliance and enforcement) or the Regulatory Powers Act. This exception is necessary to allow for samples to be tested and analysed under those provisions in a manner that may destroy the sample.

Part 4—Damaged or destroyed poultry meat or poultry meat products

11-13 Division of compensation between owners

Section 419 of the Act allows the Secretary to approve the payment of a reasonable amount of compensation in respect of goods that are damaged or destroyed in the course of exercising powers or functions under the Act, if the Secretary considers it appropriate. Section 420 provides for matters relating to claims for compensation under section 419.

Subsection 420(2) of the Act sets out who can be paid compensation approved under section 419. Relevantly, paragraph 420(2)(b) provides that if there are 2 or more owners of the compensable goods, the compensation is to be divided among those owners as prescribed by the rules.

Section 11-13 is made for the purposes of paragraph 420(2)(b) and sets out how compensation is divided among two or more owners of damaged or destroyed poultry meat or poultry meat products. The total compensation payable must be divided among those owners according to their proportion of interest in the poultry meat or poultry meat products at the time of destruction or damage.

The Secretary must be satisfied the proportion represents the owner's interest at the time the goods were damaged or destroyed. This ensures each owner is paid an amount of compensation equal to their share of ownership that the Secretary considers is equitable in the circumstances.

11-14 Amount of compensation

Subsection 420(5) of the Act provides that the amount of compensation payable under subsection 419(1) is a reasonable amount prescribed by, or determined in accordance with, the rules.

Section 11-14 is made for the purposes of subsection 420(5) of the Act and specifies the amount of compensation payable under subsection 419(1) of the Act to the owners of damaged or destroyed poultry meat or poultry meat products, where the damage or destruction occurred in the course of performing functions or duties, or exercising powers, under the Act.

Subsection 11-14(1) provides the amount of compensation payable for goods damaged by a person who is performing functions or duties or exercising powers under the Act. This is the lesser of either the amount the Secretary determines was the market value of the goods immediately before they were damaged, and the cost of repairing the damage.

The note following subsection 11-14(1) refers the reader to subsection 419(2) of the Act, which deals with when compensation is not payable in respect of goods that are damaged as a result of samples of the goods being taken.

Subsection 11-14(2) provides that the amount of compensation payable for destroyed poultry meat or poultry meat products is the amount the Secretary determines was the market value of the poultry meat or poultry meat products immediately before their destruction.

Part 5—Relevant Commonwealth liabilities

11-15 Circumstances in which relevant Commonwealth liability of a person is taken to have been paid

Section 431 of the Act provides that a relevant Commonwealth liability of a person is taken to have been paid for the purposes of a specified provision of the Act in the circumstances prescribed by the rules.

Subsection 11-15(1) provides the purpose of section 11-15 is made for the purposes of section 431 of the Act, and prescribes circumstances in which a relevant Commonwealth liability of a person is taken to have been paid for the purposes of certain provisions of the Act. The specified provisions of the Act are:

- paragraph 112(2)(b) (registration of establishment);
- paragraph 117(2)(b) (renewal of registration of establishment);
- paragraph 151(2)(b) (approval of proposed arrangement);
- paragraph 156(2)(b) (renewal of approved arrangement);
- paragraph 161(3)(a) (variation of approved arrangement).

The note following subsection 11-15(1) refers the reader to section 12 of the Act the definition of *relevant Commonwealth liability*.

Subsection 11-15(2) prescribes the circumstances that a relevant Commonwealth liability is taken to have been paid for the purposes of the provisions specified in subsection 11-15(2). These circumstances are where:

- the person, or another person, has given a written undertaking (a *payment undertaking*) to the Secretary to pay the amount;
- the undertaking includes a term that the relevant Commonwealth liability is to be reduced by the amount paid in accordance with the undertaking, and
- the Secretary accepts the undertaking.

When accepting an undertaking, the Secretary must consider the financial position of the person who gave the undertaking, the nature and likely cost of the relevant export operations, whether the person will be able to comply with the undertaking and, if applicable, meet the cost of the export operations and any other relevant considerations.

This ensures that the Secretary is able to approve, among other things, the registration of an establishment or a proposed arrangement even where the relevant Commonwealth liability of the applicant has person has not been paid, provided the requirements of this section are met.

Subsection 11-15(3) provides that the payment undertaking may be given by a person in relation to their relevant Commonwealth liability, or the relevant Commonwealth liability of another person.

Subsections 11-15(4) and (5) allow for a single undertaking to cover two or more Commonwealth liabilities. Should a single undertaking relate to two or more Commonwealth liabilities, or a person has provided two or more undertakings in relation to different Commonwealth liabilities, then the Secretary may decide in which order payments are to be applied to reduce the outstanding Commonwealth liabilities.

Subsection 11-15(6) allows for a payment undertaking to be varied at any time by agreement between the Secretary and the person who gave the undertaking.

Subsection 11-15(7) allows the Secretary to agree to a variation to a payment undertaking if they have considered the matters at paragraph 11-15(2)(c), the Secretary considers the variation appropriate, and the variation does not reduce the amount of the remaining liability.

The matters at paragraph 11-15(2) are the same matters the Secretary must consider when deciding whether to accept the undertaking in the first place, namely the financial position of the person who gave the undertaking, the nature and likely cost of the relevant export operations, whether the person will be able to comply with the undertaking and, if applicable, meet the cost of the export operations and any other relevant considerations.

CHAPTER 12—TRANSITIONAL PROVISIONS

The transitional provisions in Chapter 12 will ensure:

- persons who have submitted applications under the old *Export Control (Poultry Meat) Orders 2010* (old Export Control (Poultry Meat) Orders) do not have to resubmit those applications for a decision or determination to be made;
- decisions or determinations made under the old Export Control (Poultry Meat) Orders remain effective;
- requests made by an authorised officer in relation to trade descriptions remain effective; and
- approvals for a person to make or possess an official mark or an official marking device remain effective.

These transitional provisions in Chapter 12 are in addition to transitional provisions provided for in the *Export Control (Consequential Amendments and Transitional Provisions) Act 2020* which provides transitional arrangements for matters that were under the old Export Control (Poultry Meat) Orders and are now dealt with under the Act. This includes, for example, the transition of registered establishments, approved arrangements and government certificates.

Part 1—Preliminary

12-1 Definitions

Section 12-1 defines terms that are used in Chapter 12 of the Poultry Rules.

The term ***commencement time*** is defined as the time when section 3 of the Act commences.

The term ***old Export Control (Poultry Meat) Orders*** is defined as the *Export Control (Poultry Meat and Poultry Meat Products) Orders 2010* as in force immediately before the commencement time. The Orders will be repealed at the commencement of the Poultry Rules.

Part 2—Registered establishments: meat inspection services

12-2 Allocations of inspection services in effect immediately before commencement time

Subsection 12-2(1) provides that section 12-2 applies to allocations of inspection services for a registered establishment under Part 1 of Schedule 10 to the old Export Control (Poultry Meat) Orders that were in effect immediately before the commencement time.

Subsection 12-2(2) has the effect that the allocation continues to have effect after the commencement time as if it had been allocated to the registered establishment under Division 1 of Part 6 of Chapter 4 of the Poultry Rules.

12-3 Application for inspection services not decided, or notice of decisions not given, before commencement time

Subsection 12-3(1) provides that section 12-3 applies to an application for inspection services for a registered establishment that had been made under paragraph 1.1(b) of Schedule 10 to the old Export Control (Poultry Meat) Orders prior to the commencement time, and for which:

- no decision was made; or
- a decision was made but written notice of that decision had not been given,

prior to the commencement time.

In relation to applications where no decision had been made before the commencement time, subsection 12-3(2) provides that the application is taken, after the commencement time, to be an application under section 4-21 of the Poultry Rules for a preliminary allocation of meat inspection services to the registered establishment, and subsections 4-21(2) and (3) of the Poultry Rules do not apply to the application.

In relation to applications where a decision had been made before the commencement time, but written notice of the decision had not been given to the applicant before that time, paragraph 12-3(3)(a) provides that the decision is taken, after commencement time, to be a determination of the preliminary allocation of meat inspection services to the establishment under section 4-22(1) of the Poultry Rules. Paragraph 12-3(3)(b) further provides that the Secretary must, after the commencement time, give the applicant written notice of the determination in accordance with section 4-23 of the Poultry Rules as soon as practicable.

The note following section 12-3(3) refers the reader to section 4-24 of the Poultry Rules, which deals with the procedure following notice of preliminary allocation.

12-4 Notice of preliminary determination of allocation given before commencement time

Subsection 12-4(1) provides that section 12-4 applies if the Secretary had given written notice of a preliminary determination of the allocation of inspection services to the occupier of a registered establishment under clause 3 of Schedule 10 to the old Export Control (Poultry Meat) Orders, and both of the following apply before the commencement time:

- a memorandum of agreed intent under subclause 4 of Schedule 10 had not been completed by the Secretary and the occupier; and
- there had not been an application by the occupier to the Secretary under subclause 5.1 of Schedule 10 for the establishment of a committee to review the preliminary determination.

Subsection 12-4(2) has the effect that the notice given prior to the commencement time continues to have effect after the commencement time as if it had been given under subsection 4-23(1) of the Poultry Rules.

The note following subsection 12-4(2) refers the reader to section 4-24 of the Poultry Rules, which deals with the procedure following notice of preliminary allocation.

12-5 Preliminary determination of allocation agreed before commencement time

Subsection 12-5(1) provides that if the Secretary and occupier of a registered establishment had completed a memorandum of agreed intent under clause 4 of Schedule 10 to the old Export Control (Poultry Meat) Orders prior to the commencement time, that memorandum of agreed intent continues to have effect after the commencement time as if it had been completed under subsection 4-24(1) of the Poultry Rules.

Subsection 12-5(2) provides that a determination of the Secretary that had been deemed to be a memorandum of agreed intent under subclause 5.2 of Schedule 10 to the old Export Control (Poultry Meat) Orders continues to have effect after the commencement time as if it had been taken to be a memorandum of agreed intent under subsection 4-24(2) of the Poultry Rules.

12-6 Revised determination made, but notice not given, before commencement time

Subsection 12-6(1) provides that section 12-6 applies where the Secretary had, prior to the commencement time, made a revised determination of the allocation of inspection services for a registered establishment under clause 6 of Schedule 10 to the old Export Control (Poultry Meat) Orders, but written notice of the revised determination had not been given to the occupier of the registered establishment prior to the commencement time.

Subsection 12-6(2) has the effect that after the commencement time the determination is taken to have been given under paragraph 4-25(2)(a) of the Poultry Rules.

Subsection 12-6(3) requires the Secretary to give the occupier of the registered establishment written notice of the determination as soon as practicable after the commencement time.

Subsection 12-6(4) clarifies that the notice has effect as if it had been given under paragraph 4-25(2)(b) of the Poultry Rules.

The note following section 12-6 refers the reader to section 4-26 of the Poultry Rules, which deals with the procedure following notice of a revised allocation.

12-7 Notice of revised determination of inspection services given before commencement time

Subsection 12-7(1) provides that section 12-7 applies if the Secretary had given the occupier of a registered establishment written notice of a revised determination under subclause 6.1 of Schedule 10 to the old Export Control (Poultry Meat) Orders, and both of the following apply before the commencement time:

- the Secretary and the occupier had not completed a memorandum of written intent under subclause 7 of Schedule 10; or
- the occupier had not applied to the Secretary under subclause 8.1 of Schedule 10 for the establishment of a committee to review the revised determination.

Subsection 12-7(2) provides that the notice of the revised determination continues to have effect after the commencement time as if it were a written notice stating the revised allocation of meat inspection services to the establishment that was given to the occupier under subsection 4-25(2) of the Poultry Rules.

The note following subsection 12-7(2) refers the reader to section 4-26 of the Poultry Rules, which deals with the procedure following the notice of revised allocation.

12-8 Revised determination of allocation agreed before commencement time

Section 12-8 provides that if the Secretary and occupier of a registered establishment had completed a memorandum of agreed intent under clause 7 of Schedule 10 to the old Export Control (Poultry Meat) Orders prior to the commencement time, the memorandum of agreed intent continues to have effect after the commencement time as if it had been completed under subsection 4-26(2) of the Poultry Rules.

12-9 Application for review committee made, but committee not established, before commencement time

Subsection 12-9(1) provides that:

- where an application had been made under subclause 5.1 of Schedule 10 to the old Export Control (Poultry Meat) Orders to establish a committee to review a preliminary determination of the allocation of inspection services to a registered establishment prior to the commencement time;
- but the Secretary had not established the committee prior to the commencement time,

that application is taken, after the commencement time, to have been made under subsection 4-24(3) of the Poultry Rules.

Subsection 12-9(2) provides that:

- where an application had been made under subclause 8.1 of Schedule 10 to the old Export Control (Poultry Meat) Orders to establish a committee to review a revised determination of the allocation of inspection services to a registered establishment prior to the commencement time;
- but the Secretary had not established the committee prior to the commencement time,

that application is taken, after the commencement time, to have been made under subsection 4-26(4) of the Poultry Rules.

12-10 Committee review in progress before commencement date

Subsection 12-10(1) provides that section 12-10 applies where a committee has been established under subclause 9.1 of Schedule 10 to the old Export Control (Poultry Meat) Orders to review a determination (or a revised determination) of the allocation of meat inspection services for a registered establishment, and where the

committee either has not completed its review, or has not made any recommendations to the Secretary prior to the commencement time.

Subsection 12-10(2) has the effect that where the committee has not completed its review prior to the commencement time, the committee must complete its review and provide a written recommendation to the Secretary after the commencement time as if the old Export Control (Poultry Meat) Orders were still in force.

Subsection 12-10(3) has the effect that where the committee has completed its review, but has not provided any recommendations to the Secretary prior to the commencement time, the committee must provide a written recommendation to the Secretary as soon as practicable concerning the appropriate allocation of inspection services to the registered establishment.

Subsection 12-10(4) provides that a recommendation given under subsections (2) or (3) is taken to be given under subsection 4-26(4) of the Poultry Rules.

12-11 Determination reconsidered, but notice not given before commencement time

Subsection 12-11(1) provides that section 12-11 applies if the Secretary has determined the allocation of meat inspection services for the registered establishment under subclause 11.1 of Schedule 10 to the old Export Control (Poultry Meat) Orders but has not given written notice of that decision prior to the commencement time.

Subsection 12-11(2) has the effect that, in these circumstances, the determination made under the old Export Control (Poultry Meat) Orders is taken, after the commencement time, to have been made under subsection 4-28(1) of the Poultry Rules.

The note following subsection 12-11(2) explains that a determination made under subsection 4-28(1) of the Poultry Rules replaces any earlier determination and is taken to be a memorandum of agreed intent between the Secretary and the occupier of the registered establishment.

Subsection 12-11(3) requires the Secretary to give written notice of the decision to the occupier as soon as practicable after the commencement time in accordance with subsections 4-28(4) and (5) of the Poultry Rules.

The note following subsection 12-11(3) explains to the reader that a decision under subsection 4-28(1) of the Poultry Rules is a reviewable decision (see section 11-1 of the Poultry Rules and Part 2 of Chapter 11 of the Act).

12-12 Application to alter inspection services not decided before commencement time

Subsections 12-12(1) and (2) have the combined effect that where an application to alter an allocation of meat inspection services was made under subclause 19.1 of Schedule 10 to the old Export Control (Poultry Meat) Orders, but no decision on that application had been made prior to the commencement time, the application is taken, after the commencement date, to have been made under subsection 4-29(1) of the Poultry Rules and will be processed as such.

Subsection 12-12(3) provides that subsections 4-29(2) to (4) (concerning application requirements) do not apply to such applications.

12-13 Application for additional inspection services not decided before commencement time

Subsections 12-13(1) and (2) have the combined effect that where an application for additional meat inspection services was made under subclause 20.1 of Schedule 10 to the old Export Control (Poultry Meat) Orders, but no decision on that application had been made prior to the commencement time, the application is taken, after the commencement date, to have been made under section 4-30 of the Poultry Rules and will be processed as such.

Subsection 12-13(3) sets out on what basis (weekly, monthly, daily, hourly) the application for additional meat inspection services to be allowed is taken to be. Specifically:

- if the applicant's allocation of inspection services immediately before the commencement time had been on an annual basis, the application is taken to be for additional inspection services to be allocated on a monthly or weekly basis;
- if the applicant's allocation of inspection services immediately before the commencement time had been on a monthly basis, the application is taken to be for additional inspection services to be allocated on a weekly basis;
- if the applicant's allocation of inspection services immediately before the commencement time had been on a weekly basis, the application is taken to be for additional inspection services to be allocated on a weekly or daily basis;
- if the applicant's allocation of meat inspection services immediately before the commencement time had been on a daily basis, the application is taken to be for additional inspection services to be allocated on a daily basis;
- if the applicant's allocation of inspection services immediately before the commencement time had been on an hourly basis, the application is taken to be for additional inspection services to be allocated on an hourly basis.

Subsection 12-13(4) provides that subsections 4-30(2) to (7) (concerning application requirements) of the Poultry Rules do not apply to such applications.

12-14 Notice of termination of additional inspection services given before commencement time

Subsection 12-14(1) provides that section 12-15 applies where the occupier of a registered establishment had given notice under subclause 21 of Schedule 10 to the old Export Control (Poultry Meat) Orders to terminate additional inspection services (or any part thereof), but the notice period had not ended prior to the commencement time.

Subsection 12-14(2) provides that, after the commencement time, the notice continues to have effect as if it had been given under subsection 4-31 of the Poultry Rules.

12-15 Notice of shutdown given before commencement time

Subsection 12-15(1) provides that section 12-15 applies where the occupier of a registered establishment had given notice under clause 22.1 of Schedule 10 to the old Export Control (Poultry Meat) Orders that inspection services were not required for a shutdown period specified in the notice, but the notice period had not ended prior to the commencement time.

Subsection 12-15(2) provides that, after the commencement time, the notice continues to have effect as if it had been given under section 4-31 of the Poultry Rules.

12-16 Variation of allocation for change of circumstances not advised before commencement time

Subsection 12-16(1) provides that section 12-16 applies if the Secretary had, prior to the commencement time, varied the allocation of inspection services allocated to a registered establishment under clause 23 of Schedule 10 to the old Export Control (Poultry Meat) Orders, but had not advised the occupier of the establishment of the variation prior to the commencement time.

Subsections 12-16(2) and (3) have the combined effect that, in these circumstances, the variation is, after the commencement time, taken to be a variation made under subsection 4-32(2) of the Poultry Rules and the Secretary is required, as soon as practicable after the commencement time, to notify the occupier of the variation in accordance with the requirements of subsection 4-32(3) of the Poultry Rules.

12-17 Disputed allocation not decided before commencement time

Subsection 12-17 has the effect that an application made under subclause 24.1 of Schedule 10 to the old Export Control (Poultry Meat) Orders for reconsideration of a variation of the allocation of meat inspection services to a registered establishment for which no decision has been made prior to the commencement time is taken, after the commencement time, to have been made under subsection 4-32(4) of the Poultry Rules and will be processed as such.

12-18 Notice of reconsideration of disputed allocation not given before commencement time

Subsection 12-18(1) provides that section 12-18 applies where the Secretary had determined, under subclause 24.3 of Schedule 10 to the old Export Control (Poultry Meat) Orders, a new allocation of inspection services to a registered establishment following a reconsideration of a varied allocation, but written notice of the new allocation had not been given to the occupier prior to the commencement time.

Subsections 12-18(2) and (3) have the combined effect that, after the commencement time, the determination is taken to have been made under paragraph 4-32(6)(b) of the Poultry Rules and the Secretary is required to give the occupier of the registered establishment written notice of the determination in accordance with paragraph 4-32(7)(b) of the Poultry Rules.

The note following subsection 12-18(3) explains that a decision under paragraph 4-32(6)(b) of the Poultry Rules is a reviewable decision.

Part 3—Approved arrangements

12-19 Information and declarations given before commencement time

Subsection 12-19(1) provides that section 12-19 applies if information and declarations had been given, under subclause 8.1 of Schedule 7 to the old Export Control (Poultry Meat) Orders, to a consignee that is the occupier of a registered establishment in relation to poultry meat or poultry meat products that were at the establishment immediately prior to the commencement time.

Subsection 12-19(2) has the effect that, after the commencement time, such information and declarations are taken to be information and declarations that are required to be given to the occupier under section 5-31 of the Poultry Rules, and are taken to have been given to the occupier in accordance with paragraph 5-31(2)(b) of the Poultry Rules.

Part 4—Other matters relating to export

Division 1—Trade descriptions

12-20 Request for translation not complied with before commencement time

Section 12-20 has the effect that if an authorised officer had, by written notice to a person under suborder 10.11(4) of the old Export Control (Poultry Meat) Orders, requested a translation of part of a trade description or other information, but the request had not been complied with prior to the commencement time, the notice continues to have effect after the commencement time as if it had been given to the person under subsection 8-7(3) of the Poultry Rules.

Division 2—Official marks

12-21 Person approved before commencement time to manufacture an official mark

Subsection 12-21(1) provides that section 12-21 applies in relation to a person who, immediately before the commencement time, was approved under paragraph 7.04(f) or subparagraph 7.04(h)(ii) of the old Export Control (Poultry Meat) Orders to manufacture an official mark in relation to prescribed poultry meat or poultry meat products.

Subsection 12-21(2) has the effect that, at the commencement time, the person is taken to have been given a written approval by the Secretary under paragraph 8-20(c) of the Poultry Rules to manufacture or supply the official mark in relation to prescribed poultry meat or poultry meat products.

12-22 Person approved before commencement time to apply an official mark

Subsection 12-22(1) provides that section 12-22 applies in relation to a person who, immediately before the commencement time, was approved under paragraph 7.01(2)(e) of the old Export Control (Poultry Meat) Orders to apply an official mark in relation to prescribed poultry meat or poultry meat products.

Subsection 12-22(2) has the effect that, at the commencement time, the person is taken to have been given a written approval by the Secretary under paragraph 8-22(2)(d) of the Poultry Rules to apply the official mark at the registered establishment in relation to prescribed poultry meat or poultry meat products.

Division 3—Official marking devices

12-23 Person approved before commencement time to manufacture an official marking device

Subsection 12-23(1) provides that section 12-23 applies in relation to a person who, immediately before the commencement time, was approved by the Secretary under paragraph 7.04(f) or subparagraph 7.04(h)(ii) of the old Export Control (Poultry Meat) Orders to manufacture an official marking device that is capable of being used to apply an official mark to prescribed poultry meat or poultry meat products.

Subsection 12-21(2) has the effect that, at the commencement time, the person is taken to have been given a written approval by the Secretary under paragraph 8-34(1)(c) of the Poultry Rules to manufacture or supply the official marking device.

12-24 Person approved before commencement time to possess an official marking device

Subsection 12-24(1) provides that section 12-24 applies in relation to a person who, immediately before the commencement time, was approved by the Secretary under paragraph 7.04(f) or subparagraph 7.04(h)(ii) of the old Export Control (Poultry Meat) Orders to possess an official marking device that is capable of being used to apply an official mark to prescribed poultry meat or poultry meat products.

Subsection 12-24(2) has the effect that, at the commencement time, the person is taken to have been given a written approval by the Secretary under paragraph 8-34(1)(c) of the Poultry Rules to possess the official marking device.

Part 5—Powers and officials

Division 1—Approved auditors

12-25 Application for approval as auditor not decided, or notice of decision not given, before commencement time

Subsection 12-25(1) provides that section 12-25 applies to an application by a person for approval as an approved auditor that had been made under subclause 2.1 of Schedule 9 to the old Export Control (Poultry Meat) Orders prior to the commencement time, and for which:

- no decision was made; or
- a decision was made but written notice of that decision had not been given,

prior to the commencement time.

Subsection 12-25(2) deals with applications for which a decision was not made prior to the commencement time. Such applications are taken to have been made under subsection 9-7(1) of the Poultry Rules and will be decided in accordance with this instrument. However, the requirements in subsections 9-7(2) and (3) of the Poultry Rules (concerning application requirements) do not apply to such applications.

Subsections 12-25(3) to (5) deal with applications for which a decision was made prior to the commencement time but written notice of that decision had not been given prior to the commencement time.

For such applications:

- if the decision that was made prior to the commencement time was to approve the person as an approved auditor, the decision is taken to have been a decision under paragraph 9-8(1)(a) of the Poultry Rules. The Secretary must give the applicant written notice of the decision in accordance with section 9-11 of the Poultry Rules as soon as practicable;
- if the decision that was made prior to the commencement time was to refuse to approve the applicant as an approved auditor, the decision is taken to be a decision under paragraph 9-8(1)(b) of the Poultry Rules. The Secretary must, as soon as practicable after the commencement time, give the applicant written notice of the decision.

The note following subsection 12-25(5) explains to the reader that a decision to refuse to approve the applicant as an approved auditor is a reviewable decision (section 11-1 of the Poultry Rules), and the applicant be provided with written notice of the decision (see section 382 of the Act).

12-26 Request for further information not complied with before commencement time

Subsection 12-26(1) has the effect that if the Secretary had, by written notice under clause 3 of Schedule 9 to the old Export Control (Poultry Meat) Orders, requested a person who applied for approval as an approved auditor provide further specified information or documents, but the request had not been complied with prior to the commencement time, the request must be complied with after the commencement time as if it had been given to the person under subsection 9-9(1) of the Poultry Rules.

Subsection 12-26(2) provides that if the request did not specify the period within which the request must be complied with, it must be complied with as soon as practicable.

12-27 Decision to revoke approval as auditor decided, but notice not given before commencement time

Subsection 12-27(1) provides that where the Secretary had, prior to the commencement time, made a decision under subclause 12.1 of Schedule 9 to the old Export Control (Poultry Meat) Orders to revoke the approval of a person as an approved auditor, but written notice of the decision had not been given to the person prior to the commencement time, the Secretary is required to give the person written notice of the decision as soon as practicable after the commencement time.

Subsection 12-27(2) has the effect that after the commencement time the decision is taken to have been given under subsection 9-14(1) of the Poultry Rules.

The note following section 12-27 explains that a decision to revoke a person's approval to conduct audits is a reviewable decision (referring to section 11-1 of the Poultry Rules) and the Secretary must give the person written notice of the decision in accordance with section 382 of the Act.

Division 2—Decisions and dispositions

12-28 Decision or disposition applied but not complied with before commencement time

Subsection 12-28(1) provides that section 12-28 applies if an authorised officer applied a decision or disposition to poultry or a carcase, carcase part, poultry meat or poultry meat products under suborder 8.02(1) of the old Export Control (Poultry Meat) Orders, but the decision or disposition had not been complied with prior to the commencement time.

Subsections 12-28(2) and (3) deal with decisions or dispositions that had been applied to poultry. A decision or disposition that had been applied to poultry, and any conditions or requirements attached to the decision or disposition (including any variations) must, after the commencement time, be complied with as if the decision or disposition had been applied under, respectively, subsection 9-21(1) or paragraph 9-22(b) of the Poultry Rules.

Subsection 12-28(4) deals with dispositions that had been applied to carcase or carcase parts. A disposition that had been applied to carcase or carcase parts, and any conditions or requirements attached to the disposition (including any variations) must, after the commencement time, be complied with as if the disposition had been applied under paragraph 9-23(1)(b) of the Poultry Rules.

Subsection 12-28(5) deals with dispositions that had been applied to poultry meat or poultry meat products. A disposition that had been applied to poultry meat or poultry meat products, and any conditions or requirements attached to the disposition (including any variations) must, after the commencement time, be complied with as if the disposition had been applied under paragraph 9-24(b) of the Poultry Rules.

12-29 Certificate of condemnation requested but not given before commencement time

Subsection 12-29(1) provides that this section applies where the occupier of an establishment had, under paragraph 8.07(a) of the old Export Control (Poultry Meat) Orders, given an authorised officer a written request for a certificate of condemnation for poultry or a carcase or carcase part that was condemned at the establishment, and the certificate had not been given to the occupier before the commencement time. Where an approved arrangement is in force for export operations carried out at the establishment after the commencement time, subsection 12-29(2) has the effect that the request is taken to have been made by the holder of the approved arrangement in accordance with paragraph 9-31(b) of the Poultry Rules.

Statement of Compatibility with Human Rights

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

Export Control (Poultry Meat and Poultry Meat Products) Rules 2021

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* (Cth).

Overview of the legislative instrument

The *Export Control (Poultry Meat and Poultry Meat Products) Rules 2021* (the **Poultry Rules**) has the following purposes:

- in conjunction with the *Export Control Act 2020* (the Act), it implements an improved regulatory framework for the export of prescribed goods, reducing complexity and strengthening compliance;
- it reduces duplication in the regulatory framework and provides streamlined and consolidated export-related requirements;
- it imposes regulatory controls on poultry meat and poultry meat products that are to be exported from Australia so that these products meet trade requirements and maintain overseas market access; and
- it provides a scheme of transitional and savings provisions that will preserve accrued rights and liabilities under the *Export Control (Poultry Meat) Orders 2010*. The provisions allow for decisions and approvals under the former Orders to continue, where applicable, under the Poultry Rules.

List of human rights engaged

The Poultry Rules engage the following rights:

International Covenant on Civil and Political Rights (ICCPR)

- Article 17 of the ICCPR – Right to protection from arbitrary interference with privacy;
- Article 22 of the ICCPR – Right to freedom of association.

Assessment of compatibility with human rights

Right to protection from arbitrary interference with privacy (Article 17 of the ICCPR) and right to freedom of association (Article 22 of the ICCPR)

Article 17 of the ICCPR prohibits arbitrary or unlawful interference with an individual's privacy, family, home or correspondence, and protects a person's honour and reputation from unlawful attacks. The right to privacy can be limited to achieve a legitimate objective where the limitations are lawful and not arbitrary. For an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the circumstances. The United Nations Human Rights Committee has interpreted the requirement of 'reasonableness' as implying that any interference with privacy must be proportionate to a legitimate end and be necessary in the circumstances. While the United Nations Human Rights Committee has not defined 'privacy', the term is generally understood to comprise freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy.

Chapters 4, 7, 8, 9 and 11 of the Poultry Rules require a person to provide information or documents. Requiring persons to provide information or documents may incidentally require the provision of personal information. The collection, use, storage, and disclosure of personal information may engage the right to freedom from arbitrary or unlawful interference with privacy.

The collection of this information is necessary for the legitimate objective of assessing the suitability of a person to participate in export operations and to ensure those persons continue to comply with the legislative requirements in the Rules.

A person who provides information in an application 'opts in' to the regulatory system. A person who has opted in should expect that a certain amount of personal information about the way their business operates will need to be provided to the Secretary to gain the benefits of that system.

Article 22(1) of the ICCPR protects the right to freedom of association with others. Article 22(2) permits limitations which are prescribed by law and which are necessary in the interests of national security, public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. This right may be engaged by the requirement to be a fit and proper person which incorporates an assessment of a person's associates.

Fit and proper person test

Participation in Australia's agricultural export markets is not a right; it is a privilege granted by the Australian Government to suitable persons. A person seeking the benefits of participating in those markets does so in the knowledge that the existence of certain prior conduct or associations may result in the rejection of an application, or suspension, variation or revocation of a registration or other approval.

The Poultry Rules requires that approved auditors and third party authorised officers must be fit and proper persons. The Secretary must apply the fit and proper person test. Persons are required to notify the Secretary if they have been convicted of certain specific offences or ordered to pay a pecuniary penalty in relation to certain specified contraventions. When determining whether a person is a fit and proper person, the Secretary may consider the nature of the offences, the interest of the industry or industries relating to the person's export business, and any other relevant matter. While these factors are considered by the Secretary when applying the fit and proper persons test, they may not automatically give rise to a negative finding. Rather, it will be up to the Secretary to consider whether a person is fit and proper after having regard to these matters.

A fit and proper person test can be used to consider a person's history of compliance with legislation and then deny approval to register an establishment, or to suspend, revoke or alter the conditions on an existing approved arrangement. This ensures that persons or companies are suitable entities to be responsible for the appropriate management of relevant risks.

Business associates and others may have influence over the primary person such that they may be able to compel them to undertake illegal activities on their behalf, through inducement or other means. Putting a 'fit and proper person' test in place will notify the Department of any associates of the primary person who may pose a risk and allow them to take action to ensure Australia's agricultural exports are not compromised.

The associates' test is designed to ensure that an applicant for a regulatory control under the Act (e.g. a registered establishment) is a suitable person to be responsible for managing relevant risks, considering potential consequences of non-compliance. It is appropriate for associates to be included in the consideration to ensure that the conduct of all types of entities may be considered where the Secretary considers it appropriate to do so.

Enabling the Secretary to take into account a broad range of matters is important when considering whether a person is a fit and proper person because such a person might be involved in the export of a wide range of goods, with varying degrees of risk. This ensures that the integrity of the regulatory framework is not compromised by limiting conduct that can be considered in this context. As the agricultural export sector is regularly changing and evolving, this is reasonable and proportionate and ensures that the current level of market access can be maintained and possibly even increased in future.

Australia's access to markets and the ability to export agricultural goods depends on its trading reputation and the confidence of its trading partners. To the extent these requirements engage Article 17 of the ICCPR, any interference with privacy is not arbitrary as the fit and proper person test is necessary, reasonable and proportionate for the legitimate objective of ensuring that persons who are involved in exporting goods from Australian territory are trustworthy and demonstrate the required integrity necessary to uphold Australian law and protect our trading reputation. In addition, any information collected under the Poultry Rules and the Act is protected from unauthorised disclosure by confidentiality provisions in sections 388 to 397 of the Act.

While the fit and proper person test could be seen to restrict the associations a relevant person may have, it does not prevent or prohibit a person from holding any particular associations. Rather, holding certain association may mean that a person's circumstances are not compatible with participation in Australia's agricultural export markets. Australia's agricultural export industries are underpinned by trust. Importing country requirements relating to agricultural goods will often relate to the preservation of public health, with non-compliance representing a risk to Australia's participation in those markets. Consideration of a person's associations is necessary because associates may leverage their personal relationship with the primary person to engage in non-compliant export activities. This may pose a risk to public health and safety. Therefore to the extent that the fit and proper person test limits the right to freedom of association, it is permissible under Article 22(2) as it is for the purpose of protecting public health.

Summary

The Poultry Rules are compatible with the right to protection from arbitrary interference with privacy under Article 17 and the right to freedom of association under Article 22 of the ICCPR. To the extent that the 'fit and proper person' test required by the Poultry Rules limits these rights, this limitation is necessary, proportionate and reasonable to achieve the legitimate objectives of the Act.

Conclusion

The Poultry Rules are compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Andrew Edgar Francis Metcalfe AO

Secretary of the Department of Agriculture, Water and the Environment