

Section 381.196 also requires that a poultry inspection system maintained by a foreign country, with respect to establishments that prepare products in that country for export to the U.S., ensure that those establishments and their products comply with requirements that are equivalent to the provisions of the PPIA and the poultry products inspection regulations. Besides relying on its initial determination of a country's eligibility, coupled with ongoing system audits to ensure that products shipped to the U.S. are safe, wholesome, and properly labeled and packaged, FSIS reinspects imported ratite and ratite products by randomly sampling the products as they enter the U.S.

In addition to meeting the certification requirements under 9 CFR part 381, a foreign country's inspection system must be evaluated by FSIS before it will be granted eligibility to import ratite products into the U.S. This evaluation consists of two processes: a document review and an on-site review.

The document review is an evaluation of the laws, regulations, and other written materials used by the country to operate its inspection program. To help the country organize its materials, FSIS gives the country questionnaires that ask for detailed information about the country's inspection practices and procedures in five risk areas. These five risk areas, which are the focus of the evaluation, are sanitation, animal disease, slaughter/processing, residues, and enforcement. FSIS evaluates the information to verify that the critical points in the five risk areas are addressed satisfactorily with respect to standards, activities, resources, and enforcement.

If the document review is satisfactory, an on-site review is conducted by an experienced and trained auditor or a multi-disciplinary team that evaluates all aspects of the country's inspection program, including laboratories and individual establishments within the country.

#### **Evaluation of the Australian and the New Zealand Inspection Systems**

In response to requests from Australia and from New Zealand for approval to import ratite and ratite products into the U.S., FSIS conducted a review of the Australian and New Zealand ratite inspection systems to determine whether they are equivalent to the U.S. ratite inspection system. First, FSIS compared each country's ratite inspection laws and regulations with U.S. requirements. The study concluded that the requirements contained in both countries' ratite inspection laws and

regulations are equivalent to those mandated by the PPIA and its implementing regulations. FSIS then conducted an on-site review of the Australian and New Zealand ratite inspection system in operation. Both countries inspect ratites under the same program that FSIS has found equivalent for other species. Both countries were found to be implementing the slaughter and inspection procedures that FSIS found to be equivalent during the document analysis. Therefore, the FSIS review team concluded that the implementation of ratite processing standards and procedures in both countries is equivalent to that of the U.S.

Under this direct final rule, ratite products imported into the U.S. from Australia and from New Zealand will be subject to reinspection at the ports-of-entry for transportation damage, labeling, proper certification, general condition, and accurate count. Other types of inspection will also be conducted, including examining the product to detect organoleptic food safety or quality defects and performing microbiological or chemical analyses to detect pathogens or drug residues.

Products that pass reinspection will be stamped with the official mark of inspection and allowed to enter into U.S. commerce. If they do not meet U.S. requirements, they will be stamped "U.S. Refused Entry" and re-exported, destroyed, or converted to animal food.

Accordingly, FSIS intends to amend section 381.196(b) of the poultry products inspection regulations to add Australia and New Zealand as countries from which ratite and ratite products are eligible for importation into the U.S. As a country eligible to import ratite and ratite products into the U.S., the governments of Australia and of New Zealand will certify to FSIS those establishments that intend to import such products into the U.S. and that operate according to U.S. requirements. FSIS will verify that establishments certified by the Australia or the New Zealand government are meeting the U.S. requirements. This verification will be done through annual on-site audits of the establishments while they are in operation.

Although a foreign country may be listed as eligible to import ratite and ratite products into the U.S., products from that country must also comply with other U.S. requirements, including the restrictions under title 9, part 94 of the Animal and Plant Health Inspection Service's regulations that relate to the importation of ratite and ratite products from foreign countries into the U.S.

#### **Executive Order 12988**

This direct final rule has been reviewed under Executive Order 12988, Civil Justice Reform. States and local jurisdictions are pre-empted by the PPIA from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected ratite or ratite products that are in addition to, or different than, those imposed under the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over ratite and ratite products that are outside official establishments for the purpose of preventing the distribution of ratite and ratite products that are misbranded or adulterated under the PPIA, or, in the case of imported articles, that are not at such an establishment, after their entry into the U.S.

This direct final rule is not intended to have a retroactive effect. After this rule is adopted, administrative proceedings will not be required before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this direct final rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the PPIA.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This direct final rule has been reviewed under Executive Order 12866. It has been determined to be not significant for purposes of E.O. 12866 and therefore, has not been reviewed by the Office of Management and Budget (OMB).

Currently, there are three establishments in Australia and one in New Zealand that import ratite products into the U.S. These establishments would continue to import approximately 160,000 pounds of fresh or frozen whole, cut-up, or deboned ratite meat per year.

If the volume and types of ratite products that are imported increases, as well as competition for the available market, it is expected that benefits from this direct final rule would generally accrue to consumers in the form of lower prices. However, the volume and other changes in trade stimulated by this rule is likely to be so small as to have little effect on supply and farm-level prices for poultry or livestock. Apart from any change in prices, U.S. consumers may still benefit from an increased choice of poultry products in the marketplace.