

Dated: June 17, 2003.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

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## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

#### 9 CFR Part 381

[Docket No. 02-015DF]

RIN 0583-AC97

#### Addition of Australia and New Zealand to the List of Foreign Countries Eligible to Import Poultry Products (Ratite Only) Into the United States

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is announcing that it will add Australia and New Zealand to the list of countries eligible to import poultry products (ratite only) into the United States (U.S.). Reviews by FSIS of Australia's and New Zealand's laws, regulations, and other written materials, as well as the findings of an on-site review of each country's system, show that their regulatory systems that apply to ratite slaughter and processing include requirements that are equivalent to that of the United States under the Poultry Products Inspection Act (PPIA) and its implementing regulations.

Under this direct final rule, ratites slaughtered and processed in certified establishments in Australia and in New Zealand will be permitted to be imported into the U.S. All ratite products imported into the U.S. from Australia and New Zealand will be subject to reinspection at U.S. ports-of-entry by FSIS inspectors.

**DATES:** This rule will be effective August 22, 2003, unless written adverse comments within the scope of this rulemaking or written notice of intent to submit adverse comments within the scope of this rulemaking are received on or before July 23, 2003. If FSIS receives adverse comments, a timely withdrawal will be published in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit adverse comments or notice of intent to submit adverse comments within the scope of this rulemaking to: FSIS Docket Clerk, Docket #02-015DF, Room 102, Cotton Annex, 300 C Street, SW., Washington, DC 20250-3700. Reference materials

cited in this document and any comments received will be available for public inspection in the FSIS Docket Room from 8:30 a.m. to 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Mr. Clark Danford, Acting Director, Import-Export Programs Staff, Office of International Affairs; (202) 720-6400.

#### SUPPLEMENTARY INFORMATION:

##### Background

Effective April 2001, ratites were officially classified as poultry and subject to mandatory inspection under the PPIA (56 FR 22899). Prior to that time, imported ratites were regulated by the Food and Drug Administration (FDA).

FSIS will amend the Federal poultry products inspection regulations to add Australia and New Zealand to the list of countries eligible to import ratite and ratite products into the U.S. These countries have consistently maintained their eligibility to certify meat slaughter and processing operations.

Section 17 (21 U.S.C. 466(d)) of the PPIA states (1) notwithstanding any other provision of law, all poultry, or parts or products of poultry capable of use as human food offered for importation into the U.S. shall—(A) be subject to inspection, sanitary, quality, species verification, and residue standards that achieve a level of sanitary protection equivalent to that achieved under the U.S. standards; and (B) have been processed in facilities and under conditions that achieve a level of sanitary protection equivalent to that achieved under U.S. standards. (2)(A) The Secretary may treat as equivalent to a U.S. standard a standard of an exporting country described in paragraph (1) if the exporting country provides the Secretary with scientific evidence or other information, in accordance with risk assessment methodologies determined appropriate by the Secretary, to demonstrate that the standard of the exporting country achieves the level of sanitary protection achieved under the U.S. standard. For the purposes of this subsection, the term "sanitary protection" means protection to safeguard public health. (B) The Secretary may (i) determine, on a scientific basis, that the standard of the exporting country does not achieve the level of protection that the Secretary considers appropriate; and (ii) provide the basis for the determination in writing to the exporting country on request. (3) Any such imported poultry article that does not meet such standards shall not be permitted entry into the U.S. (4) The Secretary shall

enforce this subsection through (A) random inspections for such species verification and for residues; and (B) random sampling and testing of internal organs and fat of carcasses for residues at the point of slaughter by the exporting country, in accordance with methods approved by the Secretary. Section 17 (21 U.S.C. 466(a)) of the PPIA also prohibits the importation of any slaughtered poultry, or parts or products thereof, of any kind into the U.S. unless they are healthful, wholesome, fit for human food, not adulterated, and contain no dye, chemical, preservative, or ingredient which renders them unhealthful, unwholesome, adulterated, or unfit for human food and unless they also comply with the rules and regulations made by the Secretary of Agriculture to assure that imported poultry or poultry products comply with the standards provided for in this Act.

The importation of ratite products must be in compliance with the Federal poultry products inspection regulations to ensure that they meet the standards provided in the PPIA. 9 CFR 381.196 establishes the procedures by which foreign countries that want to import ratite or ratite products into the U.S. may become eligible to do so.

Section 381.196 requires that authorities in a foreign country's poultry inspection system certify that (1) the system provides standards equivalent to those of the U.S. and (2) the legal authority for the system and its implementing regulations are equivalent to those of the U.S. Specifically, a country's regulations must impose requirements that are equivalent to those of the U.S. in the following areas: (1) Ante-mortem and post-mortem inspection; (2) official controls by the national government over plant construction, facilities, and equipment; (3) direct and continuous supervision of slaughter activities, where applicable, and product preparation by official inspection personnel; (4) complete separation of establishments certified to export from those not certified; (5) maintenance of a single standard of inspection and sanitation throughout certified establishments; (6) requirements for sanitation at certified establishments and for sanitary handling of poultry products; (7) official controls over condemned material until destroyed or removed and, thereafter, excluded from the establishment; (8) a Hazard Analysis and Critical Control Point system as set out in 9 CFR part 417; and (9) other matters for which requirements are contained in the Act or the regulations of this part.

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.

The costs of this direct final rule will accrue primarily to producers in the form of greater competition from Australia and New Zealand. However, as mentioned in the preceding paragraph, the volume of trade stimulated by this rule would be very small, is unlikely to increase, and is likely to have no effect on supply and farm-level prices. Since Australia and New Zealand already import ratite products into the U.S. under FDA regulations, it is unlikely that U.S. firms that produce products that would compete with Australian and New Zealand's imports of ratite products would face short-run difficulties. In the long run, it is expected that even if certain adjustments need to be made because of changes in the volume or product-type imported, such firms would adjust their product mix in order to compete effectively.

#### Effect on Small Entities

The Administrator, FSIS, has made an initial determination that this direct final rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This direct final rule will add Australia and New Zealand to the list of countries eligible to import poultry products (ratites only) into the U.S. As stated above, three establishments in Australia and one in New Zealand have applied to their respective governments for certification to 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. The change in volume of trade stimulated by this rule would be very small, if any, and not likely to have much of an effect on supply and prices. Therefore, this rule is not expected to have an impact on small domestic entities that produce these types of products. Even if product quantities and varieties increase, it is expected that the volume increase will be minimal and no significant impact will be realized.

#### Paperwork Requirements

The paperwork requirements associated with the development of this direct final rule are approved under OMB number 0583-0094.

#### Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this direct final rule, FSIS will

announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS Web page located at <http://www.fsis.usda.gov>. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720-9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS Web site at <http://www.fsis.usda.gov/oa/update/update.htm>. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

#### List of Subjects 9 CFR Part 381

Imported poultry products, Ratite and ratite products.

■ For the reasons set out in the preamble, FSIS is amending 9 CFR part 381 as follows:

#### PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

■ 1. The authority citation for part 381 continues to read as follows:

**Authority:** 7 U.S.C. 138f; 450; 21 U.S.C. 451-470; 7 CFR 2.18, 2.53

■ 2. Section 381.196 is amended by adding "Australia (ratites only)" and "New Zealand (ratites only)" in alphabetical order to the list of countries in paragraph (b).

Done in Washington, DC, on: June 17, 2003.

**Dr. Garry L. McKee,**  
*Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2003-NM-134-AD; Amendment 39-13202; AD 2003-13-02]

RIN 2120-AA64

#### Airworthiness Directives; Airbus Model A321-131 Series Airplanes; Equipped with International Aero Engines (IAE) V250()-A5 Series Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Model A321-131 series airplanes, equipped with International Aero Engines (IAE) V250()-A5 series engines. This action requires revising the Limitations section of the airplane flight manual to incorporate new procedures to follow in the event of an oil filter clog message. This action is necessary to require the flightcrew to follow the procedures necessary to prevent smoke caused by an oil filter clog from entering the cabin during flight. This action is intended to address the identified unsafe condition.

**DATES:** Effective July 8, 2003.

Comments for inclusion in the Rules Docket must be received on or before July 23, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2003-NM-134-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: [9-anm-iarcomment@faa.gov](mailto:9-anm-iarcomment@faa.gov). Comments sent via fax or the Internet must contain "Docket No. 2003-NM-134-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this amendment may be examined at the FAA, Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tim Dulin, Aerospace Engineer,