

Dated: October 5, 1999.

Samuel Chambers, Jr.,
Administrator.

[FR Doc. 99-26732 Filed 10-13-99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 99-041N]

Exemption of Retail Store Operations From Inspection Requirements

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is publishing this notice to advise interested persons of a change in the application of the requirements for inspection under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA). The United States Court of Appeals for the District of Columbia Circuit recently decided that retail stores exempt from federal inspection requirements do not become subject to those requirements when they supply their own kiosks with cooked hams and cooked turkeys that the retail stores have sliced, glazed, and packaged. As a result, inspection under the FMIA or the PPIA is not required if an otherwise exempt retail store transports products such as these to additional locations before it sells them to consumers.

FSIS is reviewing its regulations on the exemption of retail operations from requirements for inspection under the FMIA and the PPIA. After completing this review, the Agency intends to initiate notice-and-comment rulemaking on the application of these requirements and on the handling conditions necessary to ensure that products delivered to consumers are not adulterated or misbranded.

FOR FURTHER INFORMATION CONTACT: Philip Derfler, Deputy Administrator, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, Washington, DC 20250-3700; (202) 720-2710.

SUPPLEMENTARY INFORMATION: The Food Safety and Inspection Service (FSIS) administers a regulatory program under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) to protect the health and welfare of consumers by preventing the distribution of products that are unwholesome, adulterated, or misbranded. Both the FMIA and the

PPIA include requirements for federal inspection, and they prohibit selling or transporting, offering for sale or transportation, or receiving for transportation, in commerce, products that are adulterated or misbranded and products required to be inspected unless they have been inspected and passed (21 U.S.C. 458(a)(2) and 610(c)).

Intrastate operations and transactions are effectively subject to the same requirements and prohibitions, pursuant to a State inspection program or designation for federal inspection (21 U.S.C. 454(c)(1) and 661(c)(1)).

In *The Original Honey Baked Ham Company of Georgia, Inc. v. Glickman, et al.*, 172 F.3d 885, 886 (D.C. Cir. 1999), the United States Court of Appeals for the District of Columbia Circuit decided that Honey Baked Ham retail stores that are exempt from federal inspection requirements do not become subject to those requirements when they supply their own temporary kiosks (booths with refrigeration units) with cooked hams and cooked turkeys that the retail stores have sliced, glazed, and packaged. According to the Court of Appeals:

* * * That the company's retail stores supply temporary kiosks during holiday seasons does not * * * transform them into "hybrid retail/wholesale" establishments to which the federal inspection requirements apply. A wholesaler does not sell to the ultimate consumer; a wholesaler is a middleman who sells to a retailer. To the extent that Honey Baked Ham's retail stores supply the company's kiosks, they still do not fit within the category of "wholesalers." The stores do not sell their products to the kiosks; the kiosks are simply an extension of the stores' retail operations. According to the * * * Department's own regulations, the company's stores fit within the description of retail establishments, kiosks or not. Their operations, of the sort "traditionally and usually conducted at retail stores," will not change when they supply kiosks. The stores glaze, slice and package products. See 9 CFR §§ 303.1(d)(2)(i)(a), (c), (e), 381.10(d)(2)(i). They sell to consumers only, not to retailers. See 9 CFR §§ 303.1(d)(2)(iii)(a), 381.10(d)(2)(iii)(a). They use meat and poultry products that are federally- or State-inspected and passed. See 9 CFR §§ 303.1(d)(2)(iii)(c), 381.10(d)(2)(iii)(c). * * * [T]here is no indication that [Honey Baked] sales * * * will exceed normal retail quantities. See 9 CFR §§ 303.1(d)(2)(ii), 381.10(d)(2)(ii). Because the company's retail stores will not lose their retail character or become "similar" to wholesale establishments when the kiosk system is fully implemented, the stores are not required to submit to federal inspection.

172 F.3d at 889.

Therefore, otherwise exempt retail store operations do not become subject to inspection requirements because a retail store transports products such as these to additional locations for sale to

consumers. Retail stores that believe their operations have been subjected to federal inspection solely because they transport products to additional locations before sale may request that inspection be terminated. (The request should be directed to the district office for the district in which a store is located.) The Agency is informing State inspection program officials, as well as FSIS personnel, of this change.

In addition, FSIS is reviewing its regulations on the exemption of retail operations from requirements for inspection under the FMIA or the PPIA. After completing this review, the Agency intends to initiate notice-and-comment rulemaking on the application of these requirements and on the handling conditions necessary to ensure that products delivered to consumers are not adulterated or misbranded. (See 21 U.S.C. 454, 455, 463(a), 464, 603 through 606, 623, 624, and 661.)

Additional Public Notification

Pursuant to Departmental Regulation 4300-4, "Civil Rights Impact Analysis," dated September 22, 1993, FSIS has considered the potential civil rights impact of this notice on minorities, women, and persons with disabilities. FSIS anticipates that this notice will not have a negative or disproportionate impact on minorities, women, or persons with disabilities. However, notices generally are designed to provide information and public awareness of policy developments is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce the publication of this **Federal Register** notice in the FSIS Constituent Update.

FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at <http://www.fsis.usda.gov>. The web page 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 fax list 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 these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to

the Congressional and Public Affairs Office, at (202) 720-5704.

Done at Washington, DC, on: October 6, 1999.

Thomas J. Billy,
Administrator.

[FR Doc. 99-26733 Filed 10-13-99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

East Kentucky Power Cooperative, Inc., Notice of Availability of an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of an environmental assessment.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) is issuing an environmental assessment with respect to the potential environmental impacts related to the addition of an 80 megawatt combustion turbine in Clark County, Kentucky. RUS may provide financing assistance to East Kentucky Power Cooperative for the project.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Rural Utilities Service, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250-1571, telephone: (202) 720-0468. Bob's e-mail address is bquigel@rus.usda.gov. Information is also available from Jeff Hohman, Environmental Manager, East Kentucky Power Cooperative, P.O. Box 707, Winchester, Kentucky 40392-0707, telephone (606) 744-4812.

SUPPLEMENTARY INFORMATION: The project consists of the construction of an additional 80 megawatt combustion turbine at East Kentucky Power Cooperative's Smith Combustion Turbine Site located approximately 9 miles southeast of Winchester, Kentucky. There are 3, 100 megawatt combustion turbines currently in operation at the site. The additional unit will be constructed next to the 3 existing units.

East Kentucky Power Cooperative prepared an environmental report for RUS which describes the project and assesses its environmental impacts. RUS has conducted an independent evaluation of the environmental report and believes that it accurately assesses the impacts of the proposed project. This environmental report will serve as RUS' environmental assessment of the project. No significant impacts are

expected as a result of the construction of the project.

The environmental assessment can be reviewed at the Clark County Public Library, 370 South Burns Avenue, Winchester, Kentucky, telephone (606) 744-5661, the headquarters of East Kentucky Power Cooperative, 4775 Lexington Road, Winchester, Kentucky, or the headquarters of RUS, at the address provided above.

Questions and comments should be sent to RUS at the address provided. RUS will accept questions and comments on the environmental assessment for at least 30 days from the date of publication of this notice.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the 7 CFR part 1794, Environmental Policies and Procedures.

Dated: October 6, 1999.

Glendon D. Deal,

Acting Director, Engineering and Environmental Staff.

[FR Doc. 99-26730 Filed 10-13-99; 8:45 am]

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DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Rules for Patent Maintenance Fees.

Form Numbers: PTO/SB/45/47/65/66.

Agency Approval Number: 0651-0016.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Burden: 26,099 hours annually.

Number of Respondents: 326,101 responses annually.

Avg. Hours Per Response: Based on estimates and knowledge of the forms, the PTO estimates the burden hours required by the public to gather, prepare and submit Maintenance Fee Transmittal Form PTO/SB/45 and "Fee Address" Indication Form PTO/SB/47 to be five minutes each. In the electronic version, it is estimated that it will take

10 seconds to enter the Patent Number and Serial Number to retrieve payment information and 10 seconds to select the fee codes to be paid if the patentee wishes to pay for the maintenance fee, for a total of 20 seconds. Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent Form PTO/SB/65 and Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent Form PTO/SB/66 are estimated to take one hour each to complete.

Needs and Uses: The identification of the application number and the patent number, the maintenance fee amount, and the surcharge amount on forms POT/SB/45 and PTO/SB/47 will be used by the PTO to record the payment of maintenance fees in order to keep the patents in force. The information will be used to prepare a receipt for the patentee and to determine whether or not a maintenance fee has been paid in response to any inquiry from the public. The optional information of the payment year and the small entity status are necessary to determine the amount of the maintenance fee due.

The use of forms PTO/SB/65 and PTO/SB/66 readily and conveniently indicates to the PTO that the required elements for the filing of petitions under 37 CFR 1.378(b) or (c) have or have not been submitted. For example, the above forms include the verified statement and appropriate check boxes (list) for indicating that the required items have been attached to the petition form, such as the maintenance fee, small entity status, reason for unintentional or unavoidable delay, and surcharge. The top of the form indicates a space for the patent number and issue date, and the application number and corresponding filing date. This identifying information assists the Office in matching the fee with the appropriate patent.

Affected Public: Individuals or households, business or other for-profit institutions, not-for-profit institutions, and the Federal government.

Frequency: Three (3) times; once every four years for payment of maintenance fees and on occasion for petitions to reinstate an expired patent (unintentional or unavoidable).

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Peter Weis, (202) 395-3630.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, Office of the Chief Information Officer, (202) 482-3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington,