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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 303 and 381

[Docket No. 99–055R]

Exemption of Retail Operations from Inspection Requirements

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim final interpretative rule with an opportunity for comment.

SUMMARY: The Food Safety and Inspection Service is advising interested persons that, in determining whether an establishment is a retail store or restaurant or a similar retail-type establishment that is exempt from requirements for inspection under the Federal Meat Inspection Act or the Poultry Products Inspection Act, the Agency will not consider sales of products that simply ''pass through'' the establishment without any processing or handling other than storage and activities incidental to storage. The effect of this interpretation is to exclude the value of those products in deciding whether, under the Agency's regulations, sales to hotels, restaurants, and similar institutions disqualify the establishment from exemption as a retail store. The Agency is providing an opportunity to comment on its interpretation in advance of upcoming rulemaking on the exemption of retail operations from inspection requirements.

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.

DATES: This interpretative rule is effective January 4, 2000. Comments may be submitted by February 3, 2000.

ADDRESSES: Submit one original and two copies of written comments to FSIS Docket Clerk, Docket No. 99–055R, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. All comments submitted will be available for public inspection in the Docket Clerk's office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

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.*) that is designed 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 that are 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)).

Both the FMIA and the PPIA provide that the statutory provisions requiring inspection of the slaughter of livestock or poultry and the preparation or processing of products thereof do not apply to ''operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service * * * to consumers at such establishments if such establishments are subject to such inspection provisions only under this paragraph'' (*i.e.*, establishments that are subject to federal inspection because they are located in designated States and territories) (21 U.S.C. 454(c)(2) and 661(c)(2)). In § 303.1(d) and § 381.10(d), respectively (9 CFR 303.1(d) and 381.10(d)), FSIS addresses the conditions under which Federal or state inspection requirements do not apply to retail operations.

A recent FSIS notice advised the public that the Agency is reviewing its regulations on the exemption of retail operations from requirements for inspection under the FMIA or the PPIA (64 FR 55694, October 14, 1999). The notice advised that the Agency intends to initiate notice-and-comment rulemaking on the application of inspection requirements and on 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). As part of this review, the Agency has reevaluated USDA's historical treatment of products that simply pass through an establishment without any processing or handling (*e.g.*, unwrapping or rewrapping) other than storage and activities, such as the unloading of vehicles, that are incidental to storage.

The FMIA defines ''prepared'' as ''slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed'' (21 U.S.C. 601(l)), and for purposes of the PPIA, ''processed'' means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed'' (21 U.S.C. 453(w)). The statutory provisions that require the inspection of slaughter and product preparation or processing (21 U.S.C. 455 and 603 through 606) do not require the inspection of storage and related activities. Other statutory provisions apply to businesses that involve product sales and storage, such as warehouses (see, *e.g.*, 21 U.S.C. 460(b)(2) and (e), 463(a), 624, 642(a)(2), and 645).

Because products that simply ''pass through'' an establishment do not undergo any processing or handling other than storage and activities incidental to storage, sales of these products should not be considered in determining whether an establishment's operations are exempt from requirements for Federal or state inspection. Currently, this question can arise when a store that otherwise meets the requirements for exemption under § 303.1(d)(2) or § 381.10(d)(2) has sales to hotels, restaurants, or similar institutions. Under the regulations (paragraphs (d)(2)(iii)(*b*) and (d)(2)(vi) of §§ 303.1 and 381.10), sales of meat or poultry products to hotels, restaurants,

and similar institutions do not disqualify an establishment from exemption as a retail store so long as they do not exceed either of two maximum limits: 25 percent of the dollar value of total product sales and the total calendar year dollar limitation. (The Administrator adjusts the dollar limitation, which currently is $41,000 under the FMIA and $39,000 under the PPIA (63 FR 41540, August 4, 1998), when the Consumer Price Index indicates a change of more than $500 in the price of the same volume of product.) FSIS applies these limits when it investigates complaints alleging that retail stores claiming exemption under § 303.1(d) or § 381.10(d) have been operating in violation of the conditions prescribed in the regulations (see paragraph (d)(3) of §§ 303.1 and 381.10).

Because FSIS's conclusion rests on its views about the scope of the FMIA and PPIA requirements for inspection (21 U.S.C. 455 and 603 through 606), the Agency has decided that it should begin applying its interpretation now with respect to sales of products that clearly have not undergone any processing or handling other than storage and activities incidental to storage, rather than waiting until the anticipated rulemaking on the exemption regulations. The effect of this interpretative rule is to exclude the value of products such as properly labeled packages of bacon and cans of poultry stew that ''pass through'' an establishment in deciding whether sales to hotels, restaurants, and similar institutions exceed either of the two maximum limits. Future calculations of the total dollar value of an establishment's sales to hotels, restaurants, and similar institutions and the proportion of its total product sales that institutional sales represent will not include the value of products so identified.

Not counting sales of products that clearly ''pass through'' an establishment without undergoing any processing or handling other than storage and activities incidental to storage essentially returns FSIS to USDA's practice during the early years of the retail exemption regulations. However, USDA then based the practice on a decision that these sales were traditional and usual for retail stores. That decision was challenged in 1975, and in January 1976, when commenters did not provide ''evidence to support a conclusion that such sales of prepackaged inspected products to nonhousehold consumers had been a traditional and usual retail operation,'' USDA withdrew a proposed rule that would have codified rules for applying the exclusion (40 FR 15906).

The basis for FSIS's action today is different, as explained above. In fact, FSIS views the ''traditionally and usually'' criterion in the retail operations exemption (21 U.S.C. 454(c)(2) and 661(c)(2)) as only restricting the types of preparation or processing operations—those ''types traditionally and usually conducted at retail stores and restaurants''—that an establishment may conduct. This is not the issue here. Other criteria in the statutory exemption address the product sales aspects of retail operations.

FSIS does recognize that the views of various members of the public may differ on the circumstances under which products should be treated as ''passing through'' an establishment. Therefore, it is providing the public with an opportunity to submit comments for consideration by the Agency during development of its proposed rule on the exemption of retail operations from inspection requirements. Pending any changes in the regulations as a result of further rulemaking, the Agency will address questions about particular products on a case-by-case basis.

Additional Public Notification

FSIS has considered the potential civil rights impact of this interpretative rule on minorities, women, and persons with disabilities. Public involvement in 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 interpretative rule and are informed about the mechanism for providing comments, FSIS will announce it and provide copies of this **Federal Register** publication 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 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 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: December 27, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 00–44 Filed 1–3–00; 8:45 am]

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 935

[No. 99–69]

RIN 3069–AA91

Information Collection Approval; Technical Amendment to Advances to Nonmembers Rule

AGENCY: Federal Housing Finance Board.

ACTION: Final Rule.

SUMMARY: Under the Paperwork Reduction Act of 1995 (Act), the Office of Management and Budget (OMB) has approved a three-year extension of the information collection contained in the Federal Housing Finance Board (Finance Board) regulation governing Federal Home Loan Bank advances to nonmembers. The OMB control number approving the information collection now expires on November 30, 2002. In accordance with the requirements of the Act, the Finance Board is amending the advances to nonmembers rule to reflect this new expiration date.

EFFECTIVE DATE: The final rule will become effective on January 4, 2000.

FOR FURTHER INFORMATION CONTACT: Jonathan F. Curtis, Senior Financial Analyst, Policy Development and Analysis Division, Office of Policy, Research and Analysis, by telephone at 202/408–2866, by electronic mail at curtisj@fhfb.gov, or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Background

In order to extend the expiration date of the OMB control number approving the information collection contained in its advances to nonmembers rule, the Finance Board published requests for public comments regarding the information collection in the **Federal Register** on June 16 and October 5, 1999. See 64 FR 32235 (June 16, 1999) and 64 FR 54021 (Oct. 5, 1999). The