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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

[Docket No. FV99–361]

Perishable Agricultural Commodities Act: Recognizing Limited Liability Companies

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) has amended the regulations under the Perishable Agricultural Commodities Act (PACA or Act) to recognize a limited liability company (LLC) as a legal entity, and also to recognize each member of an LLC, and/or any other person authorized by the members to conduct business on behalf of an LLC, as "responsibly connected" with the LLC, as defined in the PACA.

EFFECTIVE DATE: May 30, 2000.

FOR FURTHER INFORMATION CONTACT: Charles W. Parrott, Acting Chief, PACA Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2095, So. Bldg., P.O. Box 96456, Washington, DC 20090–6456, phone (202) 720–2272. Email—charles.parrott@usda.gov.

SUPPLEMENTARY INFORMATION: This regulation is issued under authority of section 15 of the PACA (7 U.S.C. 499o).

Background

The Perishable Agricultural Commodities Act (PACA or Act) establishes a code of fair trade practices covering the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The PACA protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent trade practices. In this way, the law fosters an efficient nationwide distribution system for fresh and frozen fruits and vegetables, benefiting the whole marketing chain from farmer to consumer. USDA's Agricultural Marketing Service (AMS) administers and enforces the PACA.

Any person who buys or sells commercial quantities of fruits and vegetables in interstate or foreign commerce must be licensed under the PACA. Under the Act and regulations, the term "person" means any individual, partnership, corporation, association, or separate legal entity. 7 USC 499a(b)(1); 7 CFR 46.2(i). Separate licenses are required for each person. A person is designated as "responsibly connected" with a firm under the PACA if that person is affiliated as an owner, as a partner in a partnership, or as an officer, director or holder of more than 10 percent of the outstanding stock of a corporation or association. 7 USC 499a(b)(9); 7 CFR 46.2(ff). In the event that a licensee is found to have violated the Act and USDA suspends or revokes the firm's license, then the licensee and its "responsibly connected" principals face PACA licensing and employment restrictions which may include the denial of a license, a prohibition on employment with another PACA licensee, or the requirement that a bond be posted as a prerequisite to licensing or employment in the fruit and vegetable industry. 7 USC 499h.

Previously, the PACA regulations did not specifically define a limited liability company as a "person," although USDA policy was to recognize an LLC as a separate legal entity, just as LLC's are recognized in most states, subject to licensing under the PACA. The regulatory amendments herein codify that policy by expanding the current regulations to include LLC's under the PACA, especially with regard to the licensing of LLC's and the responsibly connected status of LLC members and managers.

Comments

A proposed rule to amend PACA regulations was published in the **Federal Register** on October 25, 1999 (64 FR 57405). The proposal sought to amend several of Title 7, Part 46, to recognize an LLC as a legal entity, and also to recognize each member of an LLC, and/or any other person authorized by the members to conduct business on behalf of an LLC, as "responsibly connected" with the LLC, as defined in the PACA. The proposal also sought revision of an information collection previously approved by the Office of Management and Budget (OMB). AMS received no comments, and therefore, is making no changes to the final rule.

Executive Orders 12866 and 12988

This final rule is issued under the Perishable Agricultural Commodities Act (7 U.S.C. 499 *et seq.*), as amended, and has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by OMB.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform and is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*, USDA has considered the economic impact of this final rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121) as those with less than 500 employees. The PACA requires all businesses that operate subject to its provisions to maintain a license issued by USDA. There are approximately 15,700 PACA licensees, the majority of which may be classified as small entities.

The amendments to the PACA regulations recognize a limited liability company (LLC) as a legal entity under the PACA regulations, and revise the definition of "responsibly connected" under the regulations to include any member of an LLC, and/or any other person authorized by the members to conduct business on behalf of an LLC. The LLC business structure has become widely accepted throughout the United States as a new legal entity and these regulatory amendments clarify how

USDA deals with these entities and their principals under the PACA.

Like a sole proprietorship, partnership, corporation, or any other separate legal entity, a LLC, whether a small or large business, must obtain and maintain a valid PACA license if it buys or sells commercial quantities of fruits and vegetables in interstate or foreign commerce. AMS believes that this final rule will have no more impact on an LLC than the current PACA regulations have on sole proprietorships, partnerships, associations, or corporations operating subject to the PACA, whether large or small.

Since LLC's are required to be licensed under the PACA as a "separate legal entity," they are subject to disciplinary actions by USDA for violating the PACA and regulations. Therefore, these regulatory amendments mainly impact those persons USDA considers as "responsibly connected" with the LLC. If USDA suspends or revokes a firm's license for PACA violations, the firm and any person found "responsibly connected" with the firm are restricted for a certain period of time from holding a PACA license or from being employed with another PACA licensee. These restrictions apply to any firm which has been found to have violated the PACA, regardless of the firm's size or type of ownership.

Given the preceding discussion, AMS has determined that the provisions of this final rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and record keeping requirements covered by this final rule were approved by OMB on November 29, 1999, and expire on April 30, 2001.

List of Subjects in 7 CFR Part 46

Agricultural commodities, Brokers, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 46 is amended as follows:

PART 46—[AMENDED]

1. The authority citation for part 46 continues to read as follows:

Authority: Sec. 15, 46 Stat. 537; 7 U.S.C. 499o.

2. In § 46.2, paragraphs (i) and (ff) are revised to read as follows:

§ 46.2 Definitions.

* * * * *

(i) *Person* means any individual, partnership, limited liability company, corporation, association, or separate legal entity.

* * * * *

(ff) *Responsibly connected* means affiliation as individual owner, partner in a partnership, member, manager, officer, director or holder of more than a 10 percent ownership stake in a limited liability company, or officer, director or holder of more than 10 percent of the outstanding stock of a corporation or association.

3. § 46.4 is amended as follows:

a. Paragraphs (b)(3) and (b)(4) are revised,

b. Paragraphs (b)(6)(ii) and (b)(6)(iii) are removed,

c. Paragraph (b)(6)(iv) is redesignated as paragraph (b)(6)(ii) and revised,

d. Paragraphs (b)(6)(v) and (b)(6)(vi) are redesignated as paragraphs (b)(6)(iii) and (b)(6)(iv), and

e. The introductory text of paragraph (b)(6), and paragraph (c) are revised to read as follows:

§ 46.4 Application for license.

* * * * *

(b) * * *

* * * * *

(3) *Type of ownership.* If a corporation or limited liability company, the applicant shall furnish the month, day, and year incorporated or organized; the State in which incorporated or organized; the name in which incorporated or organized; and the address of the principal office. A limited liability company shall also furnish a copy of its articles of organization and its operating agreement.

(4) *Full legal name, all other names used, if any, and home address of owner.* If a partnership, the applicant shall furnish the legal names, all other names used, if any, and home address of all partners, indicating whether general, limited, or special partners. If a limited liability company, the applicant shall furnish the full legal names, all other names used, if any, and home address of all members, managers, officers, directors and holders of more than 10 percent of the ownership stake, and the percentage of ownership in the company held by each such person. If an association or corporation, the applicant shall furnish the full legal names, all other names used, if any, and home address of all officers, directors and holders of more than 10 percent of the outstanding stock and the percentage of stock held by each such person. Minors shall also furnish the full name and home address of their guardian. If the applicant is a trust, the name of the trust and the full name and home address of the trustee must be furnished. If the applicant is a limited liability company and a member or holder of more than 10 percent of the ownership stake is a partnership, another limited liability company, corporation, association, or separate legal entity, the applicant shall furnish the full legal names and home address of that member's partners, members, managers, directors, and officers.

* * * * *

(6) Whether the applicant, or in case the applicant is a partnership, any partner, or in case the applicant is a limited liability company, any member, manager, officer, director or holder of more than 10 percent of the ownership stake, or in case the applicant is an association or corporation, any officer, director, or holder of more than 10 percent of the outstanding stock, has prior to the filing of the application:

(i) * * *

(ii) Within three years been adjudicated or discharged as a bankrupt or was an officer, director, stockholder, partner, member, manager or owner of a firm adjudicated or discharged as a bankrupt. * * *

* * * * *

(c) The application shall be signed by the owner, all general partners, or in case the applicant is a limited liability company, a member or manager, or in case the applicant is an association, or corporation, a duly authorized officer.

* * * * *

4. In § 46.11, the first sentence is revised to read as follows:

§ 46.11 What constitutes valid license, form and use.

Each license shall bear a serial number, the names in which authorized to conduct business, type of ownership, if the business is individually owned, the name of the owner; if a partnership, the names of all general partners; if a limited liability company, the names of all members, managers, officers, directors and holders of more than 10 percent of the ownership stake, and the percentage of ownership in the company held by each such person; if a corporation or association, the names of all officers, directors, and shareholders of more than 10 percent of the outstanding stock and the percentage of stock held by each such person; the facsimile signature of the Deputy Administrator, the seal of the Department and shall be duly countersigned. * * *

5. In § 46.13, paragraphs (a)(2) and (a)(5) are revised to read as follows:

§ 46.13 Address, ownership, changes in trade name, changes in number of branches, changes in members of partnership, and bankruptcy.

* * * * *

(a) * * *

(2) Any change in officers, directors, members, managers, holders of more than 10 percent of the outstanding stock in a corporation, with the percentage of stock held by such person, and holders of more than 10 percent of the ownership stake in a limited liability company, and the percentage of ownership in the company held by each such person;

* * * * *

(5) When the licensee, or if the licensee is a partnership, any partner is subject to proceedings under the bankruptcy laws. A new license is required in case of a change in the ownership of a firm, the addition or withdrawal of partners in a partnership, or in case business is conducted under a different corporate charter, or in case a limited liability company conducts business under different articles or organization from those under which the license was originally issued.

* * * * *

Dated: April 21, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–10481 Filed 4–27–00; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG 30

List of Approved Spent Fuel Storage Casks: TN–68 Addition

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to add the Transnuclear TN–68 cask system to the list of approved spent fuel storage casks. This amendment allows holders of power reactor operating licenses to store spent fuel in the Transnuclear TN–68 cask system under a general license.

DATES: The final rule is effective May 30, 2000.

FOR FURTHER INFORMATION CONTACT: Gordon Gundersen, telephone (301) 415–6195, e-mail, GEG1@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary [of Energy] shall establish a demonstration program for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license, publishing a final rule, in 10 CFR part 72 entitled "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181, July 18, 1990). This rule also established a new Subpart L within 10 CFR part 72 entitled, "Approval of Spent Fuel Storage Casks" containing procedures and criteria for obtaining NRC approval of dry storage cask designs.

Discussion

This rule will add the Transnuclear TN–68 cask system to the list of NRC approved casks for spent fuel storage in 10 CFR 72.214. Following the procedures specified in 10 CFR 72.230 of Subpart L, Transnuclear submitted an application for NRC approval with the Safety Analysis Report (SAR) entitled "Final Safety Analysis Report for the TN–68 Dry Storage Cask," dated January 23, 1998. The NRC evaluated the Transnuclear submittal and issued a preliminary Safety Evaluation Report (SER) and proposed Certificate of Compliance (CoC) for the Transnuclear TN–68 cask system. The NRC published a proposed rule in the **Federal Register** (64 FR 45920; August 23, 1999) to add TN–68 cask system to the listing in 10 CFR 72.214. The comment period ended on November 8, 1999. Three comment letters were received on the proposed rule.

Based on NRC review and analysis of public comments, the NRC staff has modified, as appropriate, its proposed CoC, including its appendices, the Technical Specifications (TSs), and the Approved Contents and Design Features for the Transnuclear TN–68 cask system. The NRC staff has also modified its preliminary SER.

The NRC finds that the Transnuclear TN–68 cask system, as designed and when fabricated and used in accordance with the conditions specified in its CoC, meets the requirements of 10 CFR part 72. Thus, use of the Transnuclear TN–68 cask system, as approved by the NRC, will provide adequate protection of public health and safety and the environment. With this final rule, the NRC is approving the use of the Transnuclear TN–68 cask system under the general license in 10 CFR part 72, subpart K, by holders of power reactor operating licenses under 10 CFR part 50. Simultaneously, the NRC is issuing a final SER and CoC that will be effective on May 30, 2000. Single copies of the CoC and SER are available for public inspection and/or copying for a fee at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

Summary of Public Comments on the Proposed Rule

The NRC received three comment letters on the proposed rule. The commenters included an industry representative, an individual member of the public, and a utility. Copies of the public documents are available for review in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington DC.

Comments on the Transnuclear TN–68 Cask System

The comments and responses have been grouped into eight subject areas: General, materials, crud, miscellaneous issues, technical specifications, comments on applicant's SAR, accidents, and radiation protection. To the extent possible, all of the comments on a particular subject are grouped together. A review of the comments and the NRC staff's responses follow:

A. General Comments

Comment A–1: One commenter requested that the general comments submitted by the commenter on the TN–32 rule apply to this rule as well.

Response: Comments that were general enough to apply to both the TN–32 and the TN–68 casks, were addressed in the response to the comments on the TN–32 rule (65 FR 14790, March 20, 2000). Specific comments are addressed in this rulemaking for the TN–68 cask.