

manner that such assets are freely available to satisfy outstanding obligations to sellers of perishable agricultural commodities. Any act or omission which is inconsistent with this responsibility, including dissipation of trust assets, is unlawful and in violation of section 2 of the Act, (7 U.S.C. 499b).

(2) Agents who sell perishable agricultural commodities on behalf of a principal are required to preserve the principal's rights as a trust beneficiary as set forth in §46.2(z), (aa) and paragraphs (d), (f), and (g) of this section. Any act or omission which is inconsistent with this responsibility, including failure to give timely notice of intent to preserve trust benefits, is unlawful and in violation of section 2 of the Act, (7 U.S.C. 499b).

(f) *Prompt payment and eligibility for trust benefits.* (1) The times for prompt accounting and prompt payment are set out in §46.2(z) and (aa). Parties who elect to use different times for payment must reduce their agreement to writing before entering into the transaction and maintain a copy of their agreement in their records, and the times of payment must be disclosed on invoices, accountings, and other documents relating to the transaction.

(2) The maximum time for payment for a shipment to which a seller, supplier, or agent can agree and still qualify for coverage under the trust is 30 days after receipt and acceptance of the commodities as defined in §46.2(dd) and paragraph (b)(1) of this section.

(3) The trust provisions do not apply to transactions between a cooperative association (as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), and its members.

(4) The amount claimable against the trust by a beneficiary or grower will be the net amount due after allowable deductions of contemplated expenses or advances made in connection with the transaction by the commission merchant, dealer, or broker.

(g) *Filing notice of intent to preserve trust benefits.* (1) Notice of intent to preserve benefits under the trust must be in writing, given to the debtor, and filed with the Secretary within 30 calendar days:

(i) After expiration of the time prescribed by which payment must be made pursuant to regulation,

(ii) After expiration of such other time by which payment must be made as the parties have expressly agreed to in writing before entering into the transaction, but not longer than the time prescribed in paragraph (f)(2) of this section, or

(iii) After the time the supplier, seller or agent has received notice that a payment instrument promptly presented for payment has been dishonored.

Failures to pay within the time periods set forth in paragraphs (g)(1)(i) and (ii) of this section constitute defaults.

(2) Timely filing of a notice of intent to preserve trust benefits by a trust beneficiary will be considered to have been made if written notice is given to the debtor and filed with the Secretary by delivery at the headquarters office or a regional office of the P.A.C.A. Branch of the Fruit and Vegetable Division, Agricultural Marketing Service, within 30 calendar days after default as described above in paragraph (b)(3) of this section.

(3) An appropriate notice of intent to preserve trust benefits must be in writing, must include the statement that it is a notice of intent to preserve trust benefits, and must include information which establishes for each shipment:

(i) The name and addresses of the trust beneficiary, seller-supplier, commission merchant, or agent and the debtor, as applicable,

(ii) The date of the transaction, commodity, contract terms, invoice, price, and the date payment was due,

(iii) The date of receipt of notice that a payment instrument has been dishonored (if appropriate),

(iv) The amount past due and unpaid.

(Sec. 1, 46 Stat. 531, as amended; 7 U.S.C. 499a et seq.)

[49 FR 45740, Nov. 20, 1984]

OMB CONTROL NO.

**§46.47 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

The information collection requirements contained in this part have been approved by the Office of Management

and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control No. 0581-0031.

[49 FR 23826, June 8, 1984]

**§ 46.48 Procedure for investigating complaints involving commodities of a unique nature or coming from a distinct geographic area.**

(a) *Scope*: This section provides for the payment of fees and the investigation of allegations of misrepresentation or misbranding in which the commodity which is misbranded or misrepresented is purported to be a commodity of a unique name or geographical designation which is defined as:

(1) A perishable agricultural commodity as that term is defined under the Perishable Agricultural Commodities Act, 1930;

(2) Subject to a federal marketing order under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*);

(3) Traditionally identified as being produced in a distinct geographic area, State, or region; and

(4) Of a unique identity, based on such distinct geographic area, which has been promoted with funds collected through producer contributions pursuant to such marketing order.

(b) *Filing complaints*: (1) Any person desiring to complain of a possible violation by any commission merchant, dealer, or broker as a result of misrepresentation or misbranding of any commodity subject to these regulations may file a complaint with the Secretary of Agriculture and request an investigation of the complaint by the Secretary.

(2) Complaints shall be made in writing setting forth all the essential details, including but not limited to:

(i) The name and address of each complaining person;

(ii) The name and address of each person against whom the complaint is made;

(iii) The commodity, approximate quantity of the commodity, and circumstances of alleged misrepresentation or misbranding;

(iv) The current location of the commodity;

(v) If shipped, the shipping and destination points of the commodity;

(vi) A statement of all other known material facts with respect to the complaint; and

(vii) Copies of any documents or evidence of any kind in the possession of the complainant regarding the alleged violation.

(3) The complaint shall be accompanied by a non-refundable \$250.00 filing fee made payable to the Agricultural Marketing Service (see paragraph (e) of this section Collection of fees).

(4) The complaint, all supporting evidence, and fee should be mailed to: PACA Branch, room 2095 So., Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456.

(c) *Handling complaints*. (1) Upon receiving a written complaint, supporting evidence, and the \$250.00 preliminary investigation fee from a complaining person, the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture shall order a preliminary investigation to determine if the complaint can be substantiated. If the initial investigation discloses no violation of the Act, no further action shall be taken and the complaining person shall be informed of the finding. The \$250.00 filing fee shall be considered full payment for the preliminary investigation.

(2) If the Director finds reasonable cause for further investigation, the complaining person shall be duly notified of the findings. Prior to any further investigation, the Director shall advise the complaining person of the estimated fees and charges which the complaining person must pay. In calculating the estimated fees, the Director shall use the hourly salary rate of a GS-5, Step 4, for clerical time and GS-13, Step 1, for professional time, plus benefits and other related expenses including travel associated with the investigation.

(3) At the conclusion of the investigation, the Department will inform the complaining person of the results, provided, however, that any findings, the release of which may jeopardize an ongoing formal disciplinary proceeding initiated under the PACA, may be withheld pending completion of the disciplinary case.