

§ 46.47

7 CFR Ch. I (1-1-00 Edition)

transaction by the commission merchant, dealer, or broker.

(f) *Filing notice of intent to preserve trust benefits.* (1) Notice of intent to preserve benefits under the trust 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 names and addresses of the trust beneficiary, seller-supplier, commission merchant, or agent and the debtor, as applicable,

(ii) The date of the transaction, commodity, invoice price, and terms of payment (if appropriate),

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

(iv) The amount past due and unpaid.

(2) Timely filing of a notice of intent to preserve benefits under the trust will be considered to have been made if written notice is given to the debtor 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 (e)(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 (f)(2)(i) and (ii) of this section constitute defaults.

(3) Licensees may chose an alternate method of preserving trust benefits from the requirements described in paragraphs (f) (1) and (2) of this section. Licensees may use their invoice or other billing statement to preserve trust benefits. The alternative method requires that the licensee's invoice or other billing statement, given to the debtor, contain:

(i) The statement: "The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commod-

ities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received."; and

(ii) The terms of payment if they differ from prompt payment set out in section 46.2(z) and (aa) of this part, and the parties have expressly agreed to such terms in writing before the affected transactions occur.

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

[49 FR 45740, Nov. 20, 1984, as amended at 62 FR 15088, Mar. 31, 1997; 62 FR 60999, Nov. 14, 1997]

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