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(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.

(d) *Investigative authority*. Investigation of a complaint of this Section shall be deemed to be an investigation under Section 6(b) of the Perishable Agricultural Commodities Act (7 U.S.C. 499f(b)).

(e) *Collection of fees*. (1) Any person bringing a complaint, alleging a violation of section 1309 of the Food, Agriculture, Conservation, and Trade Act of 1990 shall reimburse the Secretary of Agriculture for any and all costs associated with the enforcement of that section.

(2) A non-refundable $250.00 fee for the preliminary investigation shall accompany the written complaint.

(3) An estimate of fees and charges to conduct the further investigation calculated in accordance with paragraph (c)(2) of this section will be provided the complaining person.

(i) Payment of the fees and charges shall be collected in advance by the Secretary prior to continuation of investigation of a complaint.

(ii) Payment of fees and charges may be made by cash, check, or money order payable to the Agricultural Marketing Service.

(iii) In the event that the estimated fees and charges prove to be inadequate, the complaining person will be informed of the deficiency. Any complaining person that does not reimburse the Secretary full payment for fees and charges associated with a completed investigation shall be liable to be proceeded against in any court of competent jurisdiction in a suit by the United States to collect any monetary or other damages connected with the investigation.

(iv) The complaining person will be reimbursed by the Secretary for any overpayment of fees and charges, except for the $250.00 preliminary investigation fee which is nonrefundable.

[56 FR 51826, Oct. 16, 1991]

§46.49 Written notifications and complaints.

(a) *Written notification*, as used in section 6(b) of the Act, means:

(1) Any written statement reporting or complaining of a PACA violation(s) filed by any officer or agency of any State or Territory having jurisdiction

over licensees or persons subject to license, or any other interested person who has knowledge of or information regarding a possible violation, other than an employee of an agency of USDA administering this Act or a person filing a complaint under Section 6(c);

(2) Any written notice of intent to preserve the benefits of the trust established under section 5 of this Act; or

(3) Any official certificate(s) of the United States Government or States or Territories of the United States.

(b) Any written notification may be filed by delivering it to any office of USDA or any official thereof responsible for administering the Act. A written notification which is so filed, or any expansion of an investigation resulting from any indication of additional further violations of the Act found as a consequence of an investigation based on written notification or complaint, shall also be deemed to constitute a complaint under section 13(a) of this Act.

(c) Upon becoming aware of a complaint under Section 6(a) or 6(b) of this Act, the Secretary will determine if reasonable grounds exist for an investigation of such complaint for disciplinary action. If the investigation substantiates the existence of violations, a formal disciplinary complaint may be filed by the Secretary as described under Section 6(c)(2) of the Act.

(d) Whenever an investigation, initiated as a result of a written notification or complaint under Section 6(b) of the Act, is commenced, or expanded to include new violations, notice shall be given by the Secretary to the subject of the investigation within thirty (30) days of the commencement or expansion of the investigation. Within one hundred and eighty (180) days after giving initial notice, the Secretary shall provide the subject of the investigation with notice of the status of the investigation, including whether the Secretary intends to issue a complaint under Section 6(c)(2) of this Act, terminate the investigation, or continue or expand the investigation. Thereafter, the subject of the investigation may request in writing, no more frequently than every ninety (90) days, a status report from the Chief of the PACA Branch who shall respond thereto within fourteen (14) days of receiving the request. When an investigation is terminated, the Secretary shall, within fourteen (14) days, notify the subject of the investigation of the termination. In every case in which notice or response is required under this subsection such notice or response shall be accomplished by personal service or by posting the notice or response by certified mail to the last known address of the subject of the investigation.

[62 FR 15089, Mar. 31, 1997]

PART 47—RULES OF PRACTICE UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT

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