

## Agricultural Marketing Service, USDA

## § 46.48

paragraphs (f)(1) and (2) of this section. Licensees may use their invoice or other billing statement as defined in paragraph (a)(5) of this section, whether in documentary or electronic form, to preserve trust benefits. Alternately, the licensee's invoice or other billing statement, given to the buyer, must 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 Commodities 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.

(4) If the invoice or other billing statement is in electronic form, the licensee has met its requirement of giving the buyer notice of intent to preserve trust benefits on the face of the invoice or other billing statement if the electronic invoice or other billing statement containing the statement set forth in paragraph (f)(3)(i) is sent to the buyer and the electronic transmission can be verified. The licensee will be deemed to have given notice to the buyer of its intent to preserve trust benefits if the licensee can verify that the electronic invoice or other billing statement was sent to a third party electronic transaction vendor designated by the buyer. The licensee will have met the requirement of giving the buyer written notice of intent to preserve trust benefits using electronic means if it can verify that the electronic data invoice or other billing statement was transmitted to the buyer, or its designated electronic transaction vendor, irrespective of whether or not the buyer or third party vendor downloads or accepts the trust statement.

(5) If a buyer conducts its transactions in perishable agricultural com-

modities using an electronic system, the buyer or its third party electronic vendor must allow sufficient space for the seller to include the required trust statement of intent to preserve trust benefits in the buyer's electronic invoices or other billing statement forms. A buyer or its designated third party electronic vendor must accept a seller's notice of intent to preserve benefits under the trust using the required trust statement, whether in documentary or electronic form, as set forth in paragraphs (d) and (f) of this section. Any act or omission which is inconsistent with this responsibility is unlawful and in violation of Section 2 of the Act (7 U.S.C. 499b).

(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; 72 FR 29838, May 30, 2007]

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.*);