§ 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).

(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
§ 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;

(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 this 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