

§ 46.21

others after the sales have been made. No lot number shall be repeated within a period of 30 days after the last sale from the preceding lot to which such number was assigned.

§ 46.21 Returns, rejections, or credit memorandums on sales.

In the event of the rejection and return of any produce sold for or on behalf of another, on consignment, or on joint account, or of any necessary allowance or adjustment being made to the buyers thereof, a credit memorandum showing the buyer's name, sales ticket number, lot number, date of the granting of the allowance, and amount of the credit or adjustment, with reasons therefor, shall be made or a notation shall be made on the original sales ticket referring to the adjustment and showing where the credit memorandum is filed. The credit memorandum shall be on a regular form, in a ledger book, or on a sales ticket or invoice properly completed to show the facts and shall be approved by a duly authorized person. Credits granted shall be entered in the same records as the original sales tickets.

§ 46.22 Accounting for dumped produce.

A clear and complete record shall be maintained showing justification for dumping of produce received on joint account, on consignment, or handled for or on behalf of another person if any portion of such produce regardless of percentage cannot be sold due to poor condition or is lost through re-sorting or reconditioning. In addition to the foregoing, if five percent or more of a shipment is dumped, an official certificate, or other adequate evidence, shall be obtained to prove the produce was actually without commercial value, unless there is a specific agreement to the contrary between the parties. The original certificate or other adequate evidence justifying dumping shall be forwarded to the consignor or joint account partner with the accounting and a copy shall be retained by the receiver.

§ 46.23 Evidence of dumping.

Reasonable cause for destroying any produce exists when the commodity

has no commercial value or when it is dumped by order of a local health officer or other authorized official or when the shipper has specifically consented to such disposition. The term "commercial value" means any value that a commodity may have for any purpose that can be ascertained by the exercise of due diligence without unreasonable expense or loss of time. When produce is being handled for or on behalf of another person, proof as to the quantities of produce destroyed or dumped in excess of five percent of the shipment shall be provided by procuring an official certificate showing that the produce has no commercial value from any person authorized by the Department to inspect fruits and vegetables. Where such inspection service is not available certification may be obtained from (a) any health officer or food inspector of any State, county, parish, city or municipality or of the District of Columbia; (b) any established commercial agency or service making inspections for the fruit and vegetable industry; or (c) when no inspector or health officer designated above is available consideration will be given to other evidence such as inspection and certification made by any two persons having no financial interest in the produce involved or in the business of any person financially interested therein, and who are unrelated by blood or marriage to any such financially interested person, and who, at the time of the inspection and certification, and for a period of at least one year immediately prior thereto, have been engaged in the handling of the same general kind or class of produce with respect to which the inspections and certification are to be made. Any certificate issued by any persons designated in paragraph (c) of this section shall include a statement that each of them possesses the requisite qualifications. Any such certificate shall properly identify the produce by showing the commodity, lot number, brand or principal identifying marks on the containers, quantity dumped, name and address of shipper, name and address of applicant, condition of the produce, time, place, and date of inspection and a statement that the produce possesses no commercial value.

Agricultural Marketing Service, USDA

§ 46.27

RECORDS OF RETAILERS

§ 46.24 Records of retailers.

Notwithstanding the specific records and documents prescribed in the foregoing sections, licensees who purchase produce solely for sale at retail shall establish and maintain accounts and records, adapted to their type of operations, which will fully and correctly disclose all transactions relating to the purchase of produce. Such accounts and records should include the date of receipt of each lot, kind of produce, number of packages and quantity, price paid, evidence of agreement, or contract of purchase, bills of lading, paid bills, and any other documents relating to the purchase of produce.

AUCTION SALES

§ 46.25 Auction sales.

Commission merchants, dealers and brokers who offer produce for sale through auction companies which publish catalogs of offerings will be responsible for furnishing the auction company for publication true and correct information concerning the ownership of the produce. When the produce is offered for sale by an owner, his name shall be shown in the catalog listing as owner. When a joint account partner makes an offering, his name as well as that of his joint partner, or partners, shall be shown. When any person offers produce for sale at auction for the account of another, the name, or names of the owner, if known, and of his principal shall be shown. In addition to listing such name or names he may show that he is acting in the capacity of agent. If a person instructs an auction company to catalog a shipment without disclosing true ownership, if known, or the name of an agent's principal, he shall be deemed to have made a false or misleading statement within the meaning of the Act. Since sales at auctions normally involve additional expenses, a broker, grower's agent or commission merchant shall have prior consent from his principal before such disposition is accomplished. Where a dispute exists regarding the ownership of produce, it may be listed in the auction catalog as being offered for sale "for the account

of whom concerned" with the name of the party making the offering shown as agent.

DUTIES OF LICENSEES

§ 46.26 Duties of licensees.

It is impracticable to specify in detail all of the duties of brokers, commission merchants, joint account partners, growers' agents and shippers because of the many types of businesses conducted. Therefore, the duties described in these regulations are not to be considered as a complete description of all of the duties required but is merely a description of their principal duties. The responsibility is placed on each licensee to fully perform any specification or duty, express or implied, in connection with any transaction handled subject to the Act.

BROKERS

§ 46.27 Types of broker operations.

(a) Brokers carry on their business operations in several different ways and are generally classified by their method of operation. The following are some of the broad groupings by method of operation. The usual operation of brokers consists of the negotiation of the purchase and sale of produce either of one commodity or of several commodities. A broker is usually engaged by only one of the parties, but in negotiating a contract the broker acts as a special agent of first one and then the other party in conveying offers, counter offers, and acceptances between the parties. Once the contract is formed, and the confirmation issued, the broker's duties are usually ended, and the broker is not the proper party to whom notice of breach or of rejection should be directed. However, a broker receiving notice has a duty to promptly convey the notice to the proper party. Frequently, brokers never see the produce they are quoting for sale or negotiating for purchase by the buyer, and they carry out their duties by conveying information received from the parties between the buyer and seller until a contract is effected. Generally, the seller of the produce invoices the buyer, however, when there is a specific agreement between the