

## Agricultural Marketing Service, USDA

## § 46.35

promptly in the proper amount, supported by adequate evidence, and take any necessary action to bring the matter to a conclusion.

(e) *Purchases and sales by growers' agents.* A person who operates in a dual capacity, both as a growers' agent and as a shipper, shall clearly disclose his status in each transaction to all parties with whom he is dealing. If such a person misrepresents himself as an agent, when he is acting as a shipper selling produce he has purchased, he shall be considered to have violated the Act. A growers' agent shall not charge or receive a fee from the seller or the buyer when he purchases or sells produce as a shipper. A growers' agent shall not negotiate a transaction where he is subject to the direct or indirect control of any party to such transactions, other than his principal, or where the other party is subject to the agent's direct or indirect control, without fully disclosing the circumstances to his principal and obtaining his specific prior approval.

(f) *Negligence of agent.* A growers' agent may be held liable for any loss or damage resulting to the growers due to his negligence or failure to perform any specification or duty, express or implied, arising out of any undertaking in connection with transactions subject to the Act.

(g) *Responsibility for payment.* An agent is not responsible for the payment by the buyer who has purchased the growers' produce on credit, unless he guarantees payment or is negligent in extending credit. Agreement to collect from the buyer and remit to his principal is not a guarantee by the agent that the agent will pay if the buyer does not pay.

(h) *Responsibility for payment of selling fees and expenses to the growers' agent.* In the absence of a specific agreement to the contrary, the agent does not guarantee the performance of the contracting parties and he is entitled to the payment of his selling fees and expenses incurred in handling the produce of growers or others, providing he fully performs his duties as agent.

(i) *Agent's financial responsibility to buyers for failure to comply with contracts.* If a growers' agent contracts in his own name to deliver produce to a

buyer and subsequently cannot deliver produce complying with the contract because the growers cannot or will not deliver such produce to him, he may be liable to the buyer for damages resulting from the breach of the contract.

### CONVERSION OF FUNDS

#### § 46.33 Conversion of funds.

Any licensee who collects or receives funds for or on behalf of another person or firm in connection with produce shall not make any use or disposition of such funds in his possession or control that will endanger or impair faithful and prompt payment to the owner or consignor of the produce or to any other person having a financial interest therein.

### DISCLOSURE OF BUSINESS

#### § 46.34 No disclosure of business of licensee.

No representative of the Department shall, without the consent of the licensee, divulge or make known, except to financially interested parties, or to other representatives of the Department who may be required to have such knowledge in the regular course of their official duties, or except insofar as he may be directed by the Secretary, Deputy Administrator, Director, or a court of competent jurisdiction, any facts or information regarding the business of such licensee which may come to the knowledge of such representative through an examination or inspection of the business or the accounts of the licensee, unless such facts or information should be testified to at a hearing authorized by the act because they are relevant and material to the issue in the case being heard.

### SUSPENSION AND REVOCATION OF LICENSES

#### § 46.35 Suspension or revocation order.

(a) Whenever the Secretary shall order the suspension or revocation of a license, the person against whom such order is directed shall be served by the Hearing Clerk with a copy of the order, and be notified of the effective date