

### § 18.3

### 16 CFR Ch. I (1-1-05 Edition)

#### § 18.3 Substitution of products.

With respect to industry products offered for sale by an industry member, it is an unfair or deceptive act or practice for any member of the industry:

(a) To ship or deliver industry products which do not conform to representations made prior to securing the order or to specifications upon which the sale is consummated, without advising the purchaser of the substitution and obtaining the purchaser's consent thereto prior to making shipment or delivery, where failure to advise would be misleading to purchasers; or

(b) To falsely represent the reason for making a substitution: *Provided, however*, That nothing in this section is intended to inhibit the shipment of products different from those ordered, prior to obtaining the purchaser's consent to such substitution, when the order is received by the industry member near the close of the planting season for the products ordered and the substitution involved relates but to a product or products the total price of which is comparatively small, and when:

(1) At the commencement of the planting season for the products ordered the industry member had a supply of such products sufficient to meet normal and reasonably expected orders therefor, and such supply has been exhausted; and

(2) The products substituted are of similar variety and of equal or greater value to those ordered by the purchaser and no additional charge is made therefor; and

(3) Notice of the substitution, with adequate identification of the substituted item or items, and with commitment of the industry member to refund any purchase price received for the substituted products if such products are not acceptable to the purchaser and to compensate the purchaser for any expense involved in the return of the substituted products if refund is conditioned on the return thereof, is given the purchaser at the time of his receipt of such products: *And provided further*, That nothing in this section is to be construed as sanctioning the dissemination of an advertisement of an industry product or products or the personal solicitation of

orders therefor unless at the time of such dissemination or solicitation the industry member has a supply of such product or products sufficient to meet normal and reasonably expected orders therefor. [Guide 3]

[44 FR 11177, Feb. 27, 1979, as amended at 59 FR 64549, Dec. 14, 1994]

#### § 18.4 Size and grade designations.

(a) In the sale, offering for sale, or distribution of industry products, it is an unfair or deceptive act or practice for an industry member to use any term, designation, number, letter, mark, or symbol as a size or grade designation for any industry product in a manner or under any circumstance that misrepresents directly or by implication to purchasers or prospective purchasers the actual size or grade of such products.

(b) Under this section industry members offering lining-out stock for sale shall specify conspicuously and accurately the size and age of such stock when failure to do so may misrepresent directly or by implication such stock to purchasers or prospective purchasers.

(c) Nothing in this section is to be construed as inhibiting the designation of the size or grade of an industry product by use of a size or grade designation for which a standard has been established which is generally recognized in the industry when the identity of such standard is conjunctively disclosed, the product qualifies for the designation under such standard, and no deception of purchasers or prospective purchasers results in the use of such designation.

NOTE: It is the consensus of the industry that the grade and size standard set forth in the current edition of American Standard for Nursery Stock, ANSI Z60.1, as approved by the American National Standard Institute, Inc., is generally recognized in the industry, and that use of the size and grade designation therein set forth, in accordance with the requirements of the standard for the designations, in the marketing of industry products to which such standard relates, will prevent deception and confusion of purchasers and prospective purchasers of such products. [Guide 4]

[44 FR 11177, Feb. 27, 1979, as amended at 59 FR 64549, Dec. 14, 1994]