

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 broker and its principal, the seller invoices the broker who, in turn, invoices the buyer, collects, and remits to the seller. Under other types of agreements, the seller ships the produce to pool buyers, and the broker as an accommodation to the seller invoices the buyers, collects, and remits to the seller. Also, there are times when the broker is authorized by the seller to act much like a commission merchant, being given blanket authority to dispose of the produce for the seller's account either by negotiation of sales to buyers not known to the seller or by placing the produce for sale on consignment with receivers in the terminal markets.

(b) There is a second general grouping of brokers which are commonly referred to as buying brokers. Their operations are typified by the fact that they act as the buyer's representative in negotiating purchases at shipping points, terminal markets, or intermediate points. Their typical type of operation is to negotiate a purchase on the buyer's instructions and authorization. Sometimes the broker negotiates the purchase without seeing the produce. In other instances he may select the merchandise after forming an appraisal of the quality of the produce being offered for sale on the market. Generally, a purchase is made in the buyer's name and the seller invoices the buyer direct. On the other hand, acting on authority given him by the buyer, the broker may negotiate purchases in his own name, pay the seller for the produce, make arrangements for its loading and shipment, and bill the buyer direct for the cost price plus the brokerage fee and the cost of any agreed upon accessorial service charges such as ice, loading, etc.

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##### § 46.28 Duties of brokers.

(a) *General.* The function of a broker is to facilitate good faith negotiations between parties which lead to valid and binding contracts. A broker who fails to perform any specification or duty, express or implied, in connection with any transaction is in violation of the Act, is subject to the penalties specified in the Act, and may be held liable for damages which accrue as a result of the violation. It shall be the duty of the broker to fully inform the parties concerning all proposed terms and conditions of the proposed contract. After all parties agree on the terms and the contract is effected, the broker shall prepare in writing and deliver promptly to all parties a properly executed confirmation or memorandum of sale setting forth truly and correctly all of the essential details of the agreement between the parties, including any express agreement as to the time when payment is due. The confirmation or memorandum of sale shall also identify the party who engaged the broker to