

## Agricultural Marketing Service, USDA

## § 46.43

from collecting amounts due on contracts entered into prior to the date of suspension or revocation or from remitting promptly to his principals and obligees.

### PUBLICATION OF FACTS

#### § 46.36 Publicity.

Upon the issuance by the Secretary of an order revoking or suspending a license, or in case of automatic suspension of a license for failure to pay a reparation award, the Director shall cause general publicity to be given to such fact, in order that those doing business with the licensee whose license has been revoked or suspended may take due notice thereof.

### SUNDAYS AND HOLIDAYS

#### § 46.37 Sundays and holidays excluded.

Sundays and holidays shall not be included in the computation of the 5-day period provided by section 7(d) of the Act nor in connection with the periods defined in § 46.43 with exception of paragraph (a) thereof.

#### § 46.38 Sundays and holidays included.

Sundays and holidays shall be included in the computation of all other periods mentioned in the Act or in the regulations in this part.

### COMMODITY INSPECTION

#### § 46.39 Inspection of commodities.

Each licensee shall, during ordinary business hours, promptly upon request, permit any duly authorized representative of the Department to inspect any lot of produce under his ownership or control covered by the Act. Any necessary facilities for such inspection shall be extended to such representative by the licensee, his agents, and employees. The licensee shall be furnished a copy of any certificate or memorandum of inspection which is issued for any lot of produce which is inspected in accordance with this section.

#### § 46.40 Inspection service.

The rules and regulations of the Secretary governing inspection and certification of fresh fruits and vegetables

as outlined in Part 51 of this chapter; and frozen fruits and vegetables as outlined in Part 52 of this chapter, and amendments thereto, and such additional amendments as may from time to time be promulgated shall govern the inspection of such products under the Act and are hereby made a part of the regulations in this part.

### LICENSEE'S RESPONSIBILITY FOR ACTS OF EMPLOYEES AND AGENTS

#### § 46.41 Licensee's responsibility for acts of employees and agents.

In construing and enforcing the provisions of the Act and the regulations in this part, the act, omission, or failure of any agent, officer, or other person acting for or employed by a licensee, within the scope of his employment or office, shall in every case be deemed the Act, omission, or failure of the licensee.

[25 FR 4853, June 2, 1960. Redesignated at 28 FR 7067, July 11, 1963]

### COPIES OF RECORDS

#### § 46.42 Copies of records; how obtained.

Copies of records pertaining to licensees under the Act may be furnished under the conditions and at the prices prescribed in the regulations of the Department.

[25 FR 4853, June 2, 1960. Redesignated at 28 FR 7067, July 11, 1963]

### TRADE TERMS AND DEFINITIONS

#### § 46.43 Terms construed.

The following terms and definitions, when used in any contract or communication involving any transaction coming within the scope of the Act, shall be construed as follows:

(a) *Today's shipment*, or shipment on a specified date (such as *shipment September 12*), means in connection with shipments by rail, that the goods referred to shall be under billing by the transportation company on the date the order is given or on the date specified in time to be picked up by a train schedule to move that day's loadings from the shipping point. When used in connection with shipments by boat, this term shall mean that the goods

shall be placed alongside the boat and be under billing in time to be loaded and shipped on a boat scheduled to leave before midnight of the date specified. When used in connection with shipments by truck, this term shall mean that the goods shall be loaded and shall actually start from loading point to destination before midnight of the date specified.

(b) *Tomorrow's shipment or immediate shipment* means that the shipment referred to shall be under billing by the transportation company in time to move on a transportation facility scheduled to leave not more than 24 hours later than allowed under "today's shipment."

(c) *Quick shipment* means that the conditions of the offer, order, or confirmation will be met if the shipment is under billing by the transportation company in time to move on a transportation facility scheduled to leave not more than 48 hours later than allowed under "today's shipment."

(d) *Prompt shipment* means that the conditions of the offer, order, or confirmation will be met if the shipment is under billing by the transportation company in time to move on a transportation facility scheduled to leave not more than 72 hours later than allowed under "today's shipment."

(e) *Shipment first part of week or shipment early part of week* means that the produce referred to shall be under billing on Monday or Tuesday of the week specified in time to be picked up by a train scheduled to move these days' loadings from the shipping point. When used in connection with shipments by truck, this term shall mean that the goods shall be loaded and shall actually start from loading point to destination before midnight on Tuesday of the week specified.

(f) *Shipment middle of week* means that the produce referred to shall be under billing by the transportation company in time to move on a transportation facility scheduled to leave Wednesday or Thursday of the week specified. When used in connection with shipments by truck, this term shall mean that the goods shall be loaded and shall actually start from loading point to destination before

midnight on Thursday of the week specified.

(g) *Shipment last of week or shipment latter part of week* means that the produce referred to shall be under billing by the transportation company in time to move on a transportation facility scheduled to leave on Friday or Saturday of the week specified. When used in connection with shipments by truck, this term shall mean that the goods shall be loaded and shall actually start from loading point to destination before midnight on Saturday of the week specified.

(h) *Shipment as soon as possible or Shipment as soon as car (truck) can be secured* means that the shipper is uncertain as to when the shipment can be made, but expects to make it within a reasonable time and will make it soon as possible. But in any case where these words are used the buyer shall, at any time after 7 days from the date the order is given, have the right to cancel the order or contract of sale, if notice of his decision so to cancel shall have been received by the shipper before shipment has been made.

(i) *F.o.b.* (for example, *f.o.b. Laredo, Tex.*, or *f.o.b. California*) means that the produce quoted or sold is to be placed free on board the boat, car, or other agency of the through land transportation at shipping point, in suitable shipping condition (see definitions of "suitable shipping condition," paragraphs (j) and (k) of this section), and that the buyer assumes all risk of damage and delay in transit not caused by the seller irrespective of how the shipment is billed. The buyer shall have the right of inspection at destination before the goods are paid for to determine if the produce shipped complied with the terms of the contract at time of shipment, subject to the provisions covering suitable shipping condition.

(j) *Suitable shipping condition*, in relation to direct shipments, means that the commodity, at time of billing, is in a condition which, if the shipment is handled under normal transportation service and conditions, will assure delivery without abnormal deterioration at the contract destination agreed upon between the parties. If a good delivery standard for a commodity is set forth in § 46.44, and that commodity at

the contract destination contains deterioration in excess of any tolerance provided therein, it will be considered abnormally deteriorated. The seller has no responsibility for any deterioration in transit if there is no contract destination agreed upon between the parties.

(k) *Suitable shipping condition*, in connection with reconsigned rolling or tramp cars, means that the commodity, at time of sale, meets the requirements of this phrase as defined in paragraph (j) of this section, relating to direct shipments.

(l) *F.o.b. acceptance or Shipping point acceptance* means that the buyer accepts the produce at shipping point and has no right of rejection. The buyer has recourse against the seller if the produce was not in suitable shipping condition (see definitions, paragraphs (j) and (k) of this section) or has recourse for a material breach of contract, providing the shipment is not rejected. The buyer's remedy under this method of purchase is by recovery of damages from the seller and not by rejection.

(m) *F.o.b. acceptance final or Shipping point acceptance final* means that the buyer accepts the produce at shipping point and has no right of rejection. Suitable shipping condition does not apply under this trade term. The buyer does have recourse for a material breach of contract, providing the shipment is not rejected. The buyer's remedy under this type of contract is by recovery of damages from the seller and not by rejection of the shipment.

(n) *F.o.b. steamer* means that the produce is to be placed free on board steamer at shipping point, in suitable shipping condition (see definitions of "suitable shipping condition", paragraphs (j) and (k) of this section) in accordance with the terms of the contract, and that the buyer assumes all responsibility and risk of damage thereafter.

(o) *F.a.s. steamer* means that the produce is to be delivered free alongside the steamer, in suitable shipping condition (see definitions of "suitable shipping condition", paragraphs (j) and (k) of this section), in accordance with the terms of the contract, and that the

buyer assumes all responsibility and risk of damage thereafter.

(p) *Delivered or delivered sale* means that the produce is to be delivered by the seller on board car, or truck or on dock if delivered by boat, at the market in which the buyer is located, or at such other market as is agreed upon, free of any and all charges for transportation or protective service. The seller assumes all risks of loss and damage in transit not caused by the buyer. For example, a sale of "U.S. No. 1 potatoes delivered Chicago" means that the potatoes, when tendered for delivery at Chicago, shall meet all the requirements of the U.S. No. 1 grade as to quality and condition.

(q) *In transit, roller, or rolling car* means that the produce referred to is in possession of the transportation company and under movement from shipping point when the quotation is made, and that the car is moving over a route in line of haul between the point of origin and the market in which delivery is to be made, and has been so moving since date of shipment, without any delay attributable to the shipper or his agent. Unless otherwise specifically agreed, if a roller, rolling car, or a car in transit is sold f.o.b. shipping point, the buyer shall be deemed to have assumed only the lowest all-rail freight charges applicable for the shipment between the point of origin and the contract destination agreed upon between the parties together with such other charges which would have accrued if the car had been originally shipped direct to the contract destination: *Provided*, That the buyer is not liable for payment for protective services if the seller does not inform him of the kind and extent of such services ordered from the carrier.

(r) *Tramp car or tramp car sale* means that the produce has left the shipping point under a bill of lading issued prior to the day on which the quotation is made and has moved or is moving over a route out of line of haul with the market in which it is to be delivered or in which it is being offered or quoted, or has been moving over a route in line of haul between the point of origin and the market in which it is to be delivered or in which it is being offered or quoted, but has been delayed in transit

by the seller, or has been held by the transportation company at diversion or other points en route awaiting instructions from the shipper and by such holding or delay has missed scheduled movement between points of shipment and the market in which it is to be delivered as the result of the transaction in question. Unless otherwise specifically agreed, if a "tramp car" is sold f.o.b. shipping point or a "tramp car sale" is made f.o.b. shipping point, the buyer shall be deemed to assume only the lowest authorized all-rail freight charges applicable for the shipment between the point of origin and the contract destination agreed upon between the parties, together with such other charges which would have accrued if the car had been originally shipped direct to the contract destination: *Provided*, That the buyer is not liable for payment for protective services if the seller does not inform him of the kind and extent of such services ordered from the carrier.

(s) *Rolling acceptance* means that the buyer accepts at time of purchase produce which is in the custody of the transportation company and under movement from shipping point, under the terms and conditions described in paragraphs (q) and (r) of this section, except that the buyer assumes full responsibility for transportation of the goods from time of purchase, has no recourse against the seller because of any change in condition after time of purchase unless the goods at the time of sale were not in suitable shipping condition, and has no right of rejection on arrival. The buyer's remedy under this method of purchase is by recovery of damages from the shipper and not by rejection of the shipment. By agreement between the parties, however, the purchase may be made subject to inspection at any specified point while the car is rolling or in transit and the point at which the buyer will assume transportation charges may be specified without affecting the time of acceptance of the commodity.

(t) *Rolling acceptance final* means the same as *Rolling acceptance* except that the buyer has no recourse against the seller because of any change in condition of the produce in transit. The buyer has recourse against the seller

for any material breach of the contract providing the shipment is not rejected. The buyer's remedy under this type of contract is recovery of damages from the seller and not by rejection.

(u)(1) *Track sale* or *sale on track* means a sale of produce on track after transit and after inspection or opportunity for inspection by the buyer, or his agent, who shall be considered to have waived any right to reject the commodity so purchased upon receipt by him or his duly authorized representative from the seller or his duly authorized representative of the bill of lading, delivery order, or other document enabling him to obtain the goods from the carrier.

(2) The above definition shall not be construed as depriving the buyer of a right to reparation when the unloading of the car demonstrates that a part of the lading which was not accessible to inspection was of a quality or condition materially inferior to that portion which was accessible to inspection; but notice of intention to file a claim for reparation must be given the seller within 24 hours after receipt by the buyer of the delivery order or bill of lading.

(3) If the seller gives the date of arrival when quoting price, the buyer shall, in the absence of any written memorandum of sale to the contrary, assume all charges that accrue on the shipment from the date of its arrival. If the seller fails to furnish the date of arrival when quoting price the buyer may, in the absence of any written memorandum of sale which includes the date of arrival or specific written statement as to who shall assume such charges as have accrued after arrival, assume that the shipment arrived at point of sale on the day and date upon which the purchase was made, and shall be liable only for such charges as would properly attach to a shipment arriving on the date the purchase was made.

(v) *C.a.f.*, *c.a.c.*, and *c.i.f.* mean *cost and freight*, *cost and charges*, and *cost, insurance, and freight*, respectively. *C.a.f.* sales shall be deemed to be the same as *f.o.b.* sales, except that the selling price shall include the correct freight charges to destination. *C.a.c.* sales shall be deemed to be the same as

f.o.b. sales, except that the selling price includes the correct freight and refrigeration or heater charges to destination. C.i.f. sales shall be deemed to be the same as f.o.b. sales, except that the selling price includes insurance and the correct freight and refrigeration or heater charges to destination.

(w) *Carload, carlot, or car* when used in offers, quotations, or contracts in which the quantity is not more definitely specified, and in the absence of well-established trade custom or standard as to size of a "carload," "carlot," or "car" of the produce in question, means not less than the minimum quantity required by the carrier's tariff applicable to the movement, and not more than 10 percent in excess of such minimum tariff requirements, except that, where the carrier's tariffs provide alternative rates and minimum, the buyer shall state which tariff minimum must be observed, and, in event of failure so to do, the shipper may exercise his discretion, in no case, however, exceeding the higher alternative minimum quantity provided by the tariff, with only such variations therefrom as are permitted by this paragraph.

(x) *Shipping-point inspection* means that the seller is required to obtain Federal or Federal-State inspection, or such private inspection as has been mutually agreed upon, to show the compliance of the lot sold with the quality, condition, and grade specifications of the contract, and that the seller assumes the risk incident to incorrect certification.

(y) *Shipping-point inspection final, or inspection final* following the name of the State or point, as *California inspection final*, means that the seller is required to obtain Federal or Federal-State inspection, or such private inspection as has been mutually agreed upon, to show the compliance of the lot sold with the quality, condition, and grade specifications of the contract, and that the buyer assumes the risk incident to incorrect certification and is without recourse against the seller on account of quality, condition, and grade.

(z) *Subject approval Government inspection* means that the seller is required to obtain Federal or Federal-State inspection, or such private inspection as has

been mutually agreed upon, and to correctly communicate, by wire or other agreed means, the statements on the certificate as to quality, condition and grade, and other essential information, whereupon the buyer, upon approval thereof, will be deemed to have accepted the produce without recourse against the seller on account of quality, condition, and grade.

(aa) *Guaranteed advance* used in connection with an advance payment on consigned produce means that the person making the advance guarantees that the net proceeds to the consignor shall at least equal the amount so advanced, and that the consignor cannot be held liable for any deficit resulting from the sale of the produce, if such deficit is not occasioned by or contributed to by an act of the consignor.

(bb) *Accommodation advance or regular advance*, used in connection with an advance of money or credit against anticipated net proceeds to be realized from the sale of consigned produce, means that the consignor has received an advance of money or credit and that, if the consigned produce does not sell for enough to cover the cost of transportation and handling, including customary or agreed commission and the advance made to him, the consignor must return to the person making the advance a sum equal to the deficit sustained.

(cc) *Price arrival*, in the absence of a contrary specific understanding, means that the produce is shipped either direct to the customer or to an agent of the consignor, for the benefit of the customer, the price to be subject to agreement between the customer and the consignor upon the arrival of the produce at the customer's destination, with sufficient time being permitted for inspection.

(dd) *F.o.b. inspection and acceptance arrival* means that the produce quoted or sold is to be placed by the seller free on board car or other agency of through transportation at shipping point, the cost of transportation to be borne by the buyer, but the seller to assume all risks of loss and damage in transit not caused by the buyer, who has the right to inspect the goods upon arrival and to reject them if, upon such inspection, they are found not to meet

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the specifications of the contract of sale at destination. The buyer may not reject without reasonable cause. Such a sale is f.o.b. only as to price and is on a delivered basis as to grade, quality, and condition.

(ee) *F.o.b. sale at delivered price* means the same as f.o.b., except that transportation charges from shipping point to destination shall be borne by the seller; that is, the sale is f.o.b. as to grade, quality, and condition, and delivered as to price.

(ff) *Purchase after inspection* means a purchase of produce after inspection or opportunity for inspection by the buyer or his agent. Under this term the buyer has no right of rejection and waives all warranties as to quality or condition, except warranties expressly made by the seller.

(gg) *Cash sale* means that the buyer is required to pay the seller within 24 hours after his acceptance of the shipment.

(hh) *Joint Account—Split Above* means that the receiving joint partner will pay promptly the agreed cost of the shipment to his joint partner. After disposition of the produce, the parties will divide equally the profits on the shipment after deduction of the cost of the shipment and proper expenses from the gross proceeds. The receiving joint partner will pay all expenses and cannot recover any loss resulting from the joint venture.

(ii) *Commercial Unit* means a single shipment of one or more perishable agricultural commodities tendered for delivery on a single contract, such commercial unit must be accepted or rejected in its entirety. Acceptance of a commercial unit does not modify the parties' existing contractual rights and responsibilities.

[25 FR 4853, June 2, 1960, as amended at 26 FR 12209, Dec. 21, 1961. Redesignated at 28 FR 7067, July 11, 1963, and amended at 44 FR 50576, Aug. 29, 1979]

GOOD DELIVERY STANDARDS

§ 46.44 Good delivery.

Unless otherwise agreed to between the contracting parties, "Good Delivery" in connection with f.o.b. contracts of purchase and sale means that the commodity meets the requirements of

the contract at time of loading or sale and, if the shipment is handled under normal transportation service and conditions, will meet the following additional requirements on delivery at the contract destination:

(a) *Lettuce.* (1) If the contract specifies a U.S. grade, the lettuce may contain an average of not more than 3 percent condition defects, including not more than 2 percent decay affecting any portion of the head exclusive of wrapper leaves in excess of the destination tolerances provided for the applicable grade in the U.S. Standards for Grades of Lettuce. (For example, the U.S. No. 1 grade provides a 12 percent tolerance for damage at destination. If a lot contains 5 percent damage by permanent grade factors, 7 percent of the tolerance can be applied to damage by condition factors. The additional 3 percent Good Delivery tolerance would then allow a total of 10 percent damage by condition factors in this shipment at destination.)

(2) If the contract does not specify a U.S. grade or percentage of condition defects, the lettuce at destination may contain a maximum of 15 percent, by count, of the heads in any lot which are damaged by condition defects, including therein not more than 9 percent serious damage of which not more than 5 percent may be decay affecting any portion of the head exclusive of wrapper leaves. Sales made on a percentage of a U.S. grade, without specifying the percentage of condition defects separately from the permanent defects, fall under this provision, and the lettuce may not contain more than a total of 15 percent condition defects at destination. However, if the condition defects are specified, provision No. 3 will apply.

(3) If the contract specifies a percentage of individual or combined condition defects, the lettuce at destination may contain either of the following, whichever is greater:

(i) One and one-half times the specified percentage of damage or serious damage by condition defects: *Provided*, That, if serious damage is not specified, one-half of the allowance at destination may be serious damage, including therein not more than one-quarter of the total allowance may be