

Agricultural Marketing Service, USDA

§ 46.31

GROWERS' AGENTS AND SHIPPERS

§ 46.30 Types of operations by growers' agents and shippers.

(a) The usual operations of shippers consist of purchasing produce from growers in their own names. They distribute the produce in commerce by selling, consigning, or jointing the shipments, assuming any loss or profits that result from these operations. In addition, shippers may handle produce on joint account with growers or others.

(b) Growers' agents sell and distribute produce for or on behalf of growers and others and, in addition, may perform a wide variety of services, such as financing, planting, harvesting, grading, packing, furnishing labor, seed, containers, and other supplies or services. They usually distribute the produce in their own names and collect payment direct from the consignees. They render accountings to their principals, paying the net proceeds after deducting their expenses and fees. Some agents are limited by contract to making only sales and cannot joint or consign produce without obtaining the prior consent of the growers. Other agents are granted blanket authority by the growers to market and distribute the produce, using their discretion as to the best methods, depending on market conditions and the quality of the produce available. They can sell, consign or ship on joint account, use the services of brokers or sell through terminal market auctions. They are authorized to grant credits, make adjustments in the invoice price, handle claims with the carriers, or even abandon shipments, when circumstances justify such action, without consulting the growers. Some agents have an agreement with the growers to pool the produce and render accountings on the basis of the average or prorated selling prices after deducting the prorated expenses incurred for the various operations performed and the agents' selling fees. Some agents' contracts require an accounting on the basis of actual selling prices after deducting the actual expenses incurred for services performed and the selling fees. Some agents' contracts specify a fixed charge for harvesting, grading, packing, fur-

nishing the container or other services, plus a selling fee, and thereby substantially reduce the record requirements necessary to prove the cost of the various operations.

§ 46.31 Duties of shippers.

(a) *General.* The responsibilities of shippers vary with their contracts with growers to purchase produce or to handle produce on joint account. Similarly, their responsibilities to their customers depend upon their contracts to sell, consign or joint account produce with dealers on terminal markets. Shippers shall pay promptly for produce purchased and any deficits incurred on consigned shipments. They shall fully comply with their obligations in connection with joint account transactions. A shipper who fails to perform any express or implied duty is in violation of the Act and may be held liable for any damages resulting therefrom. The shipper shall prepare and maintain records which fully and correctly disclose the details of his transactions.

(b) *Receiving records.* Each shipper shall prepare and maintain a record of all produce handled including his own production. This record shall be in the form of a book (preferably a bound book), with numbered pages or comparable business records. This receiving record shall show for each lot the date received, whether purchased or received on joint account, the quantity, quality, and kind of produce, the purchase price or joint account cost, and the name and address of the supplier. Shippers shall issue receipts to growers and others for all produce received.

(c) *Disposition records.* When a shipper purchases produce from growers or others, his records shall also show the disposition of the produce, whether sold or consigned, date of shipment, car number, or if shipped by truck, the license number, name and address of the carrier, name and address of the buyer, commission merchant or auction, and other pertinent details of the transaction, such as the terms of sale, selling price, and date of payment.

(d) *Joint accounts with growers.* When a shipper enters into a joint account transaction with growers or others, the agreement between the parties should

be reduced to a written contract clearly defining the duties and responsibilities of both parties and the extent of the shipper's authority in distributing the produce. The shipper shall prepare and maintain records to show in detail the actual expenses incurred for the services he furnishes, such as harvesting, grading, packing and selling the produce (unless a fixed charge is agreed upon by the parties to cover the cost of these services), methods of distribution and proceeds received for the produce. If a shipper is at the same time handling similar produce not involved in the joint account transaction, a lot number or other positive means of identification shall be assigned to each lot of produce received in order to segregate and identify the various lots of produce. If a shipper consigns all or part of the produce or employs the services of brokers or terminal market auctions, his records shall show the results of these transactions, including the expenses involved and the names and addresses of the commission merchants, brokers, and the auctions. The shipper shall render a detailed and accurate accounting and pay promptly the net proceeds due the joint partner, in accordance with § 46.2(y), (z), and (aa). The accounting shall disclose the status of all claims collected or filed with the carriers.

(e) *Joint accounts with receivers.* When a shipper enters into a joint account agreement with a terminal market dealer, the agreement should be reduced to writing clearly defining the terms of the agreement. The shipper's records shall show the expenses which may be properly charged in accordance with the joint agreement, purchase price or joint account cost of the produce, and cost of harvesting, packing, grading, or other expenses. His records shall show the quantity and quality of the produce packed and shipped, the dates and methods of shipment, and all other pertinent details of his operation. At the conclusion of the transaction, a detailed and accurate accounting shall be furnished promptly to the joint partner, in accordance with § 46.2(z). If a deficit results, the shipper shall pay promptly his share of the deficit.

§ 46.32 Duties of growers' agents.

(a) *General.* The duties, responsibilities, and extent of the authority of a growers' agent depend on the type of contract made with the growers. Agreements between growers and agents should be reduced to a written contract clearly defining the duties and responsibilities of both parties and the extent of the agent's authority in distributing the produce. When such agreements between the parties are not reduced to written contracts, the agent shall have available a written statement describing the terms and conditions under which he will handle the produce of the grower during the current season and shall mail or deliver this statement to the grower on or before receipt of the first lot. A grower will be considered to have agreed to these terms if, after receiving such statement, he delivers his produce to the agent for handling in the usual manner. In the event an unsolicited lot of produce is accepted by an agent for handling in his usual manner, he shall promptly deliver or mail a copy of such statement to the grower. A copy of this statement, showing the name of the grower and the date the statement was delivered to the grower, shall be retained in the agent's files. An agent who does not have in his files either written contracts or a written statement as required herein is failing to prepare and maintain full and complete records as required by the Act. *Provided,* That regulations or bylaws of cooperative marketing associations may be used in lieu of individual agreements or contracts to determine the methods of accounting and settlement with their grower members. An agent who fails to perform any specification or duty, express or implied, is in violation of the Act and may be held liable for any damages resulting therefrom and for other penalties provided under the Act for such failure.

(b) *Accounting for charges.* A growers' agent whose operations include such services as the planting, harvesting, grading, packing, furnishing of containers or other supplies, storing, selling or distributing produce for or on behalf of growers shall prepare and maintain complete records on all transactions in sufficient detail as to