

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 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 decay affecting any portion of the head exclusive of wrapper leaves. (For example, a lot sold as "16 percent tipburn" could have a total of 24 percent damage by tipburn at destination, including not more than 12 percent serious damage of which not more than 6 percent may be decay affecting any portion of the head exclusive of wrapper leaves.) or

(ii) Up to 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.

Unless otherwise agreed to by the parties, condition defects will be considered to be damage as defined in the U.S. Standards for Lettuce.

(4) If the contract clearly indicates by descriptive terms that the lettuce is of inferior quality, larger allowances for damage by condition defects than those specified above will be applied.

(5) If the buyer and the seller agree to percentages for defects at destination, higher or lower than those specified above, such percentages will determine whether good delivery is made.

[26 FR 12209, Dec. 21, 1961. Redesignated at 28 FR 7067, July 11, 1963]

#### MISREPRESENTATION OR MISBRANDING

#### § 46.45 Procedure in administering section 2(5) of the Act.

It is a violation of section 2(5) for a commission merchant, dealer, or broker to misrepresent by word, act, mark, stencil, label, statement, or deed, the character, kind, grade, quality, quantity, size, pack, weight, condition, degree, or maturity, or State, country, region of origin of any perishable agricultural commodity received, shipped, sold, or offered to be sold in interstate or foreign commerce. However, a person other than the first licensee handling misbranded perishable agricultural commodities shall not be held liable for a violation of section 2(5) of the Act by reason of the conduct of another if the person did not have knowledge of the violation or lacked the ability to correct the violation.

(a) *Violations*. Violations are considered to be serious, very serious, or repeated and/or flagrant, depending upon the circumstances of the misrepresentation.

(1) *Serious violations*. Include the following:

(i) Any lot of a perishable agricultural commodity shown by official inspection to contain scorable defects, off-size, off-count, exceeding the tolerance(s) in an amount up to and including double the tolerance provided in the applicable grades, standards or inspection procedures;