

This rule was filed as 21 NMAC 25.5

TITLE 21 AGRICULTURE AND RANCHING
CHAPTER 25 AGRICULTURAL MARKETING, PROCESSING AND INSPECTION
PART 5 LICENSE FEES AND BONDS FOR PRODUCE BROKERS, DEALERS, AND PACKERS

21.25.5.1 ISSUING AGENCY: New Mexico Department of Agriculture, P. O. Box 30005, MSC 3189, Las Cruces, NM 88003-8005, (505) 646-4929.
 [09/15/97; Recompiled 12/31/01]

21.25.5.2 SCOPE: This rule establishes license fees and bonds for produce brokers, dealers, and packers doing business in New Mexico.
 [09/15/97; Recompiled 12/31/01]

21.25.5.3 STATUTORY AUTHORITY: Granted to the board of regents of New Mexico state university and the New Mexico department of agriculture under the New Mexico Produce Marketing Act, Chapter 76, Article 15, Sections 10 through 22 NMSA 1978.
 [09/15/97; Recompiled 12/31/01]

21.25.5.4 DURATION: Permanent
 [09/15/97; Recompiled 12/31/01]

21.25.5.5 EFFECTIVE DATE: September 15, 1997
 [09/15/97; Recompiled 12/31/01]

21.25.5.6 OBJECTIVE: To establish yearly license fees and bond requirements for produce brokers, dealers, and packers.
 [09/15/97; Recompiled 12/31/01]

21.25.5.7 DEFINITIONS:

- A. "Produce" means the food produced from any vine, tree, or plant which produces fruits or vegetables for human consumption.
 - B. "Broker" means a commission merchant or any other person engaged in the business of receiving any produce for sale, on commission, for or on behalf of another.
 - C. "Packer" means any person engaged in the business of grading, packing, cooling or storing of any produce other than his own production.
 - D. "Dealer" means any person engaged in the business of buying any produce from the grower for processing or resale.
 - E. "Person" means individuals, partnerships, corporations, and grower cooperative associations or any other legal entities.
 - F. "Grower" means any person engaged in the growing of any produce crop.
- [09/15/97; Recompiled 12/31/01]

21.25.5.8 LICENSE FEES AND BONDS:

- A. Broker
 - (1) License Fee: \$50/year
 - (2) Bond: \$10,000
- B. Dealer
 - (1) License Fee: \$50/year
 - (2) Bond: \$10,000
- C. Packer
 - (1) License Fee: \$25/year
 - (2) Bond: \$5,000

[09/15/97; Recompiled 12/31/01]

HISTORY OF 21.25.5 NMAC:

Pre-NMAC History: The material in this Part was derived from that previously filed with the State Records Center and Archives under:
 NMDA Rule No. 90-1, License Fees and Bonds for Produce Brokers, Dealers, and Packers, filed 2/20/90.

History of Repealed Material: [RESERVED]

"THESE ARE NOT OFFICIAL RULES OF THE STATE OF NEW MEXICO UNDER THE PROVISIONS OF 14-4-7.1 AND 14-4-7.2 NMSA 1978. THE NEW MEXICO STATE RECORDS CENTER AND ARCHIVES ADVISES POTENTIAL USERS OF THESE RULES THAT THEY MAY NOT BE CORRECT, COMPLETE OR CURRENT. FOR AN OFFICIAL COPY OF A NEW MEXICO RULE CONTACT THE ISSUING AGENCY OR THE NEW MEXICO STATE RECORDS CENTER AND ARCHIVES, STATE RULES DIVISION, 1205 CAMINO CARLOS REY, SANTA FE, NM 87505, (505) 476-7907."

Fruit and Vegetable Standards

Chapter 76, Article 15, Sections 10 through 22

Sections:

76-15-10 Exclusions and exemptions.

76-15-11 Short title.

76-15-12 Purpose of act.

76-15-13 Definitions.

76-15-14 Application; license; bonds.

76-15-15 License fees; bonds.

76-15-16 Records and accounts.

76-15-17 Board regulations.

76-15-18 Voluntary certification; fees.

76-15-19 Penalties.

76-15-20 Injunction.

76-15-21 Individual action on bond.

76-15-22 Relationship to other laws.

76-15-10. Exclusions and exemptions.

The Produce Marketing Act [76-15-10 to 76-15-22 NMSA 1978] shall not apply to any New Mexico grower growing and selling produce of his own production.

76-15-11. Short title.

This act [76-15-10 to 76-15-22 NMSA 1978] may be cited as the "Produce Marketing Act".

76-15-12. Purpose of act.

The purpose of the Produce Marketing Act [76-15-10 to 76-15-22 NMSA 1978] is to promote the development of the produce industry in New Mexico, to prevent fraud and deception in the receiving, packing, marketing, shipping, consignment, sale and accounting of sales of produce, to establish quality standards for produce and to provide for proper licensing and bonding of brokers, packers and wholesalers covered by the Produce Marketing Act.

76-15-13. Definitions.

As used in the Produce Marketing Act [76-15-10 to 76-15-22 NMSA 1978]:

- A. "produce" means the food product from any vine, tree or plant which produces fruits, vegetables or nuts for human consumption;
- B. "board" means the board of regents of the New Mexico state university;
- C. "broker" means a commission merchant or any other person engaged in the business of receiving any produce for sale, on commission or for or on behalf of another;
- D. "packer" means any person engaged in the business of grading, packing, cooling or storing of any produce other than his own production;
- E. "grower" means any person engaged in the growing of any produce crop;
- F. "person" means individuals, partnerships, corporations and grower cooperative associations or any other legal entities;
- G. "dealer" means any person engaged in the business of buying any produce from the grower for processing or resale; and
- H. "cash buyer" means any person who acquires possession or control of produce and pays in full at the time of the acquisition in lawful money of the United States or by certified or

76-15-14. Application; license; bonds.

Except for a cash buyer, no person shall act as a dealer, broker or packer without first obtaining a license from the board. The board may grant licenses in proper cases upon written application accompanied by the appropriate fee and surety bond. The application shall be on a form prescribed and provided by the board, and shall require information concerning the identity of the owners and officers of the firm to be licensed, and any other information the board deems necessary. The surety bond shall be approved as to form by the attorney general and shall be conditioned on the conduct of the business of the person bonded in compliance with the Produce Marketing Act [76-15-10 to 76-15-22

NMSA 1978], and honestly and without fraud. The bond shall run to the state of New Mexico for the payment of all inspection fees, and for the benefit of any person or persons injured by the dishonesty, fraud or noncompliance with the Produce Marketing Act or any regulation of the board.

76-15-15. License fees; bonds.

The fees and bonds required under the Produce Marketing Act [76-15-10 to 76-15-22 NMSA 1978] shall be established by the department of agriculture in an amount not to exceed:

	License Fee	Bond
Broker	\$100	\$100,000
Packer	\$ 50	\$ 50,000
Dealer	\$ 50	\$ 50,000

76-15-16. Records and accounts.

All persons licensed under the Produce Marketing Act [76-15-10 to 76-15-22 NMSA 1978] shall keep complete and accurate records showing all produce handled by them, the ownership of the produce, date and place of any shipments. Packers will give growers the weight or count by box or bag of any produce packed for the grower. Brokers are required to give growers a record of the shipments upon completion of shipping.

76-15-17. Board regulations.

The board is authorized to:

- A. establish, after proper hearing, reasonable rules and regulations on containers, packaging and labeling;
- B. establish regulations on acquiring information about brokers, [and] packers, relative to the officers, or officials in the company; and
- C. establish any other rules or regulations the board may deem necessary.

76-15-18. Voluntary certification; fees.

Any grower, or broker, desiring federal-state inspection certificates on loads or lots of fruits or vegetables may request inspection and certification and receive such inspection and certification upon payment of fees set by board regulation to cover the cost of inspection fees and issuance of the certificates.

76-15-19. Penalties.

Any person violating any provision of the Produce Marketing Act [76-15-10 to 76-15-22 NMSA 1978] or any rule or regulation promulgated by the board is guilty of a misdemeanor and upon conviction shall be fined not more than three hundred dollars (\$300) or imprisoned for not more than ninety days, or both. Conviction of a misdemeanor under the Produce Marketing Act is grounds for revocation of license.

76-15-20. Injunction.

In addition to any other remedy under law, the board may apply to the district court for an injunction, and in proper case the district court may issue a temporary or permanent injunction or both, restraining any person from violating or continuing to violate any of the provisions of the Produce Marketing Act [76-15-10 to 76-15-22 NMSA 1978] or any regulation promulgated by the board. In issuing an injunction on the application of the board, the court shall require no 76-15-20 AGRICULTURE 76-15-22 bond.

76-15-21. Individual action on bond.

In the absence of written agreement between the parties, setting a shorter time, no action by an owner or grower for payment from any broker or other person for any load or lot of produce shall be commenced prior to sixty days from the time of shipment. After sixty days from the date of shipment such action can be maintained against the broker and his bond unless the broker has ample justification to show why the payments have not been made.

76-15-22. Relationship to other laws.

If at any time, standards are promulgated for the grading of fruit for a district organized under Section 76-15-1 through 76-15-9 NMSA 1978, the standards for the district shall control insofar as they are higher than the standards set under the Produce Marketing Act [76-15-10 to 76-15-22 NMSA 1978]. Insofar as the district standards are lower, the standards set under the Produce Marketing Act shall control.

**NEW MEXICO DEPARTMENT OF AGRICULTURE
APPLICATION FOR
FRUIT AND VEGETABLE BROKERS LICENSE
Under Chapter 76, Article 15, Sections 10-22, NMSA 1978**

TO: New Mexico Department of Agriculture

I hereby make application for license to engage in the business of a farm produce broker, and elect to be governed by the rules and regulations as stipulated by the Produce Marketing Act. I agree to abide by the provisions in this act requiring a complete and accurate set of records be kept of all transactions of fruits or vegetables received from any resident or grower in this state. I hereby agree to abide by all other provisions of the New Mexico Produce Marketing Act. This license shall be valid for one (1) year from the date that it is issued.

Name in which this license is to be issued:

E-Mail address: _____

Mailing address of principals: _____

Phone Number: _____

Address of principals in New Mexico: _____

Phone Number: _____

Name of individual in New Mexico that is authorized to receive legal notice:

Name(s) of the agent(s) selling for the above firm in New Mexico: _____

The fee should accompany this application for a license. The license fee for a produce broker will be \$50, accompanied by a bond of \$10,000. This bond and license must be approved prior to the shipping of any produce in the State of New Mexico.

Signature of Applicant

Make all checks payable to the *New Mexico Fruit and Vegetable Inspection Service*.

Mailing Address:

New Mexico Department of Agriculture
Fruit and Vegetable Inspection Service
MSC 5600, P O Box 30005
Las Cruces, New Mexico 88003-8005
Attn: Elaine M Padilla

For Department Use Only:

License Number: _____

Application Received: _____

Bond Received: _____

Check Received: _____

License Completed: _____

**NEW MEXICO DEPARTMENT OF AGRICULTURE
APPLICATION FOR
FRUIT AND VEGETABLE DEALERS LICENSE
Under Chapter 76, Article 15, Sections 10-22, NMSA 1978**

TO: New Mexico Department of Agriculture

I hereby make application for license to engage in the business of a farm produce dealer, and elect to be governed by the rules and regulations as stipulated by the Produce Marketing Act. I agree to abide by the provisions in this act requiring a complete and accurate set of records be kept of all transactions of fruits or vegetables received from any resident or grower in this state. I hereby agree to abide by all other provisions of the New Mexico Produce Marketing Act. This license shall be valid for one (1) year from the date that it is issued.

Name in which this license is to be issued:

E-Mail address: _____

Mailing address of principals: _____

_____ Phone Number: _____

Address of principals in New Mexico: _____

_____ Phone Number: _____

Name of individual in New Mexico that is authorized to receive legal notice:

Name(s) of the agent(s) selling for the above firm in New Mexico: _____

The fee should accompany this application for a license. The license fee for a produce dealer will be \$50, accompanied by a bond of \$10,000. This bond and license must be approved prior to the shipping of any produce in the State of New Mexico.

Signature of Applicant

Make all checks payable to the *New Mexico Fruit and Vegetable Inspection Service*.

Mailing Address:

New Mexico Department of Agriculture
Fruit and Vegetable Inspection Service
MSC 5600, P O Box 30005
Las Cruces, New Mexico 88003-8005
Attn: Elaine M Padilla

For Department Use Only:

License Number: _____

Application Received: _____

Bond Received: _____

Check Received: _____

License Completed: _____

**NEW MEXICO DEPARTMENT OF AGRICULTURE
APPLICATION FOR
FRUIT AND VEGETABLE PACKER LICENSE
Under Chapter 76, Article 15, Sections 10-22, NMSA 1978**

TO: New Mexico Department of Agriculture

I hereby make application for license to engage in the business of a farm produce packer and elect to be governed by the rules and regulations as stipulated by the Produce Marketing Act.

I agree to abide by the provisions in this act requiring a complete and accurate set of records be kept of all transactions of fruits or vegetables received from any resident or grower in this state.

I hereby agree to abide by all other provisions of the New Mexico Produce Marketing Act. This license shall be valid for one (1) year from the date that it is issued.

Name in which this license is to be issued:

E-Mail address: _____

Mailing address of principals: _____

Phone Number: _____

Address of principals in New Mexico: _____

Phone Number: _____

Name of individual in New Mexico that is authorized to receive legal notice:

Name(s) of the agent(s) selling for the above firm in New Mexico: _____

The fee should accompany this application for a license. The license fee for a packer will be \$25, accompanied by a bond of \$5,000. This bond and license must be approved prior to the shipping of any produce in the State of New Mexico.

Signature of Applicant

Make all checks payable to the *New Mexico Fruit and Vegetable Inspection Service*.

Mailing Address:

New Mexico Department of Agriculture
Fruit and Vegetable Inspection Service
MSC 5600, P O Box 30005
Las Cruces, New Mexico 88003-8005
Attn: Elaine M Padilla

For Department Use Only:

License Number: _____

Application Received: _____

Bond Received: _____

Check Received: _____

License Completed: _____

(PRINCIPAL'S ACKNOWLEDGMENT- INDIVIDUAL OR PARTNERSHIP)

STATE OF NEW MEXICO)
) SS.
COUNTY OF _____)

On the _____ day of _____, A.D. 20 ____, before me personally appeared _____, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that _____ he _____ executed the same as _____ free act and deed.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal the day and year in this certificate first above written.

My Commission Expires:

Notary Public

(PRINCIPAL'S ACKNOWLEDGMENT - CORPORATE)

STATE OF NEW MEXICO)
) SS.
COUNTY OF _____)

On this _____ day of _____, A.D. 20 ____, before me personally appeared _____, who, being by me duly sworn, did say that he is _____, who, being of _____ and that the seal affixed to said instrument is the corporate seal of said corporation by authority of its board of directors, and the said _____ acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year in this certificate first above written.

My Commission Expires:

Notary Public

(CORPORATE SURETY ACKNOWLEDGMENT)

STATE OF NEW MEXICO)
) SS.
COUNTY OF _____)

On this _____ day of _____, 20 ____, before me _____, to me personally known, who, being by me duly sworn, did say that he is Attorney-in-Fact of _____, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and the said _____ acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year in this certificate first above written.

My Commission Expires:

Notary Public

FRUIT AND VEGETABLE BOND (BROKER/DEALER)

KNOW ALL MEN BY THESE PRESENTS:

That we, _____
of _____, New Mexico, as Principal, and _____

_____ as surety, are will and firmly bound in the penal sum of TEN THOUSAND DOLLARS (\$10,000.00), in lawful money of the United States of America, to the STATE OF NEW MEXICO, in accordance with Chapter 76, Article 15, Sections 10 through 22, New Mexico Statutes Annotated 1978.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that, whereas, the above named principal has applied to New Mexico State University for a license entitling said principal to conduct the business of farm produce broker or dealer at the place or places named in the application from the license issue date until the license expiration date, in accordance with provisions of the New Mexico Produce Marketing Act approved March 5, 1963.

NOW, THEREFORE, if said principal shall well and truly comply with the provisions of the act, and will conduct and transact his business as farm produce broker or dealer honestly and without fraud and in compliance with the provisions of said Act, then this obligation to be null and void, otherwise to remain in full force and effect until the expiration date; provided, however, that this bond may be continued from year to year by Certificate issued by the Surety and signed by its Attorney-in-Fact.

IT IS FURTHER PROVIDED that the Surety shall have the right to terminate its surety ship under this obligation by serving notice in writing of its election so to do upon the New Mexico State University, Las Cruces, New Mexico, 88003, thirty days prior to the date of such termination of surety ship, and thereafter the said Surety shall be discharged from any liability hereunder for any default of the Principal occurring after such termination of liability.

IN WITNESS WHEREOF, the said Principal has hereunto set his hand and seal and the said Surety has caused this bond to be sealed with its corporate seal, attested by the signature of its Attorney-in-Fact, this _____ day of _____, 20 ____.

(Principal)

BY

COUNTERSIGNED:

(Title)

Authorized New Mexico Agent

BY

(Attorney-in-Fact)

FRUIT AND VEGETABLE BOND (PACKER/SHIPPER)

KNOW ALL MEN BY THESE PRESENTS:

That we, _____
of _____, New Mexico, as Principal, and _____

_____ as surety, are will and firmly bound in the penal sum of FIVE THOUSAND DOLLARS (\$5,000.00), in lawful money of the United States of America, to the STATE OF NEW MEXICO, in accordance with Chapter 76, Article 15, Sections 10 through 22, New Mexico Statutes Annotated 1978.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that, whereas, the above named principal has applied to New Mexico State University for a license entitling said principal to conduct the business of farm produce packer /shipper, at the place or places named in the application from the license issue date until the license expiration date, in accordance with provisions of the New Mexico Produce Marketing Act approved March 5, 1963.

NOW, THEREFORE, if said principal shall well and truly comply with the provisions of the act, and will conduct and transact his business as farm produce packer/shipper honestly and without fraud and in compliance with the provisions of said Act, then this obligation to be null and void, otherwise to remain in full force and effect until the expiration date; provided, however, that this bond may be continued from year to year by Certificate issued by the Surety and signed by its Attorney-in-Fact.

IT IS FURTHER PROVIDED that the Surety shall have the right to terminate its surety ship under this obligation by serving notice in writing of its election so to do upon the New Mexico State University, Las Cruces, New Mexico, 88003, thirty days prior to the date of such termination of surety ship, and thereafter the said Surety shall be discharged from any liability hereunder for any default of the Principal occurring after such termination of liability.

IN WITNESS WHEREOF, the said Principal has hereunto set his hand and seal and the said Surety has caused this bond to be sealed with its corporate seal, attested by the signature of its Attorney-in-Fact, this _____ day of _____, 20_____.

(Principal)
BY _____

(Title)

COUNTERSIGNED:

BY _____
(Attorney -in-Fact)

Authorized New Mexico Agent