

CHAPTER 72

BONDING REQUIREMENTS OF COMMISSION
MERCHANTS, DEALERS, BROKERS AND AGENTS

Authority

N.J.S.A. 4:1-11.1 and 4:11-15 et seq., specifically 4:11-33.1.

Source and Effective Date

R.2008 d.249, effective July 25, 2008.
See: 40 N.J.R. 2158(a), 40 N.J.R. 4759(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 72, Bonding Requirements of Commission Merchants, Dealers, Brokers and Agents, expires on July 25, 2015. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 72, Licensing and Bonding, originally codified as N.J.A.C. 2:33, was filed and became effective prior to September 1, 1969.

Pursuant to Executive Order 66(1978), Chapter 72, Licensing and Bonding, was readopted as R.1983 d.396, effective September 1, 1983. See: 15 N.J.R. 1051(b), 15 N.J.R. 1574(c).

Pursuant to Executive Order 66(1978), Chapter 72, Licensing and Bonding, was readopted as R.1988 d.371, effective July 8, 1988. See: 20 N.J.R. 955(a), 20 N.J.R. 1872(a).

Pursuant to Executive Order No. 66(1978), Chapter 72, Licensing and Bonding, was readopted as R.1993 d.378, effective July 2, 1993. See: 25 N.J.R. 1802(a), 25 N.J.R. 3453(c).

Administrative correction. See: 30 N.J.R. 1563(a).

Pursuant to Executive Order No. 66(1978), Chapter 72, Bonding Requirements of Commission Merchants, Dealers, Brokers and Agents, was readopted as R.1998 d.377, effective June 26, 1998, with the retitling of the chapter effective July 20, 1998. See: 30 N.J.R. 1461(a), 30 N.J.R. 2617(d).

Chapter 72, Bonding Requirements of Commission Merchants, Dealers, Brokers and Agents, was readopted as R.2003 d.294, effective June 27, 2003. See: 35 N.J.R. 1615(a), 35 N.J.R. 3296(a).

Subchapter 2, Grower Claims, was adopted as new rules by R.2006 d.440, effective December 18, 2006. See: 38 N.J.R. 3100(a), 38 N.J.R. 5352(a).

Chapter 72, Bonding Requirements of Commission Merchants, Dealers, Brokers and Agents, was readopted as R.2008 d.249, effective July 25, 2008. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. COMMISSION MERCHANTS, DEALERS,
BROKERS, AGENTS

- 2:72-1.1 Definitions
2:72-1.2 License application requirements

SUBCHAPTER 2. GROWER CLAIMS

- 2:72-2.1 Claim filing procedures

SUBCHAPTER 3. COMMISSION MERCHANTS, DEALERS
AND BROKERS RECORD OF TRANSACTION

- 2:72-3.1 Dealer's record of transaction; copy to grower
2:72-3.2 Commission merchant's record of transaction; copy to grower

- 2:72-3.3 Broker's record of transaction, copy to grower
2:72-3.4 Certified weights for each load of hay, grain and straw

SUBCHAPTER 1. COMMISSION MERCHANTS,
DEALERS, BROKERS, AGENTS

2:72-1.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Acceptable form of surety" means any security acceptable under N.J.S.A. 4:11-20 and N.J.A.C. 2:72-1.2(b).

"Applicant" means a dealer, broker, or commission merchant applying for a license pursuant to N.J.S.A. 4:11-19.

"Certified vehicle tare weight" means the weight of an empty vehicle as certified by agreement between the grower and the commission merchant, dealer, broker or agent.

"Department" means the New Jersey Department of Agriculture.

"Invoice" means the written record of transactions between a grower and a broker, commission merchant or dealer created pursuant to N.J.A.C. 2:72-3.1(a), 3.2(a) or 3.3(a).

"Persons" shall mean any individual, corporation, business, partnership, association, cooperative, limited liability company, or other legal entity.

"Prompt settlement" means 10 days from the date of delivery of the agricultural commodity unless a differing standard is provided in the invoice.

Amended by R.1980 d.57, effective February 1, 1980.

See: 12 N.J.R. 2(a), 12 N.J.R. 103(a).

New Rule, R.2006 d.440, effective December 18, 2006.

See: 38 N.J.R. 3100(a), 38 N.J.R. 5352(a).

Former N.J.A.C. 2:72-1.1, Bond requirement, recodified to N.J.A.C. 2:72-1.2.

2:72-1.2 License application requirements

(a) All persons required to be licensed pursuant to N.J.S.A. 4:11-18 shall file an application on or before November 1 of each year that includes the following:

1. A written application upon a form provided by the Department that conforms to the requirements of N.J.S.A. 4:11-19, which shall include the names and addresses of all agents conducting business on behalf of the applicant in accordance with N.J.S.A. 4:11-22;
2. Proof of surety in accordance with the following:
 - i. An acceptable form of surety that conforms to the requirements of (b) below; or

ii. The date on which the commission merchant, broker or dealer will begin purchasing, receiving, soliciting or negotiating the sale of any agricultural commodity, provided the applicant later submits an acceptable form of surety at least 15 days before engaging in such business. No license shall be issued until an acceptable form of surety that complies with (b) below is actually submitted;

3. A nonrefundable application fee of \$30.00 made payable to the New Jersey Department of Agriculture; and

4. Any other information or documentation the Secretary of Agriculture deems necessary in order to determine the character, financial responsibility or good faith of an applicant.

(b) The acceptable form of surety required in N.J.S.A. 4:11-20 shall be equal to the maximum calendar month purchases multiplied by the number of days before payment is made on those purchases divided by 30, which in no event shall be less than \$5,000 nor greater than \$150,000.

Recodified from N.J.A.C. 2:72-1.1 and amended by R.2006 d.440, effective December 18, 2006.

See: 38 N.J.R. 3100(a), 38 N.J.R. 5352(a).

Added (a); inserted designation (b); and rewrote (b).

SUBCHAPTER 2. GROWER CLAIMS

2:72-2.1 Claim filing procedures

(a) All claims filed pursuant to N.J.S.A. 4:11-28.1 shall be filed with the Department on forms provided for such purpose and in accordance with the requirements of this section. Each claim form shall be notarized and shall include the following:

1. The grower's name, phone number, and mailing address, including the county;
2. The name and address of the purchaser against whom the claim is made;
3. The amount of the claim;
4. The signature of the grower;
5. The date; and
6. Any other information deemed necessary by the Department.

(b) Forms for filing claims against any commission merchant, dealer or broker are available by contacting the Department at:

New Jersey Department of Agriculture
P.O. Box 330
Trenton, New Jersey 08625-0330

(c) All claim forms and any accompanying attachments shall be filed with the Department within 90 days from the date when payment was due, in accordance with the following:

1. All claims shall be filed at the following address:

New Jersey Department of Agriculture
P.O. Box 330
Trenton, New Jersey 08625-0330;

2. Claims will be rejected if not received by the 90th day; and

3. For purposes of determining the 90-day time period, the date payment is due shall be 10 days from the date of the delivery of the agricultural commodity unless the invoice specifies a different payment date, which in no event shall be later than December 31 of the current licensing year.

Amended by R.2008 d.249, effective August 18, 2008.

See: 40 N.J.R. 2158(a), 40 N.J.R. 4759(b).

In the address in (b) and (c)1, deleted the telephone number.

SUBCHAPTER 3. COMMISSION MERCHANTS, DEALERS AND BROKERS RECORD OF TRANSACTION

2:72-3.1 Dealer's record of transaction; copy to grower

(a) Every dealer or dealer's agent purchasing, receiving or obtaining an agricultural commodity from a grower shall, simultaneously with the purchasing, receiving or obtaining of the agricultural commodity, create an invoice stating in detail for each agricultural commodity the following:

1. Name and address of the dealer;
2. Name and address of the grower;
3. Date on which the transaction occurred;
4. Terms of the sale and how purchased, including the timeframe for when payment is to be made;
5. Price of the sale (If the price to be paid is based upon a market quotation for such agricultural commodity, the record shall specify the date and location of the market to be used in arriving at the purchase price); and
6. Name of the agricultural commodity, number of containers, size, and net weight, and grade of agricultural commodity, where applicable.

(b) Where more than one agricultural commodity is purchased, received or obtained from a grower on a particular date, such information may be set forth on a single invoice.

(c) A copy of the invoice containing the information required in (a) above shall be issued to the grower upon purchase, receipt or obtaining possession of the agricultural commodity by the dealer or dealer's agent.

(d) The dealer or dealer's agent shall retain the invoice in his or her possession for a period of not less than one year from the date of the transaction. These records must be presented upon demand to an authorized agent of the New Jersey Department of Agriculture.

Amended by R.2006 d.440, effective December 18, 2006.
See: 38 N.J.R. 3100(a), 38 N.J.R. 5352(a).

In the introductory paragraph of (a), substituted "or dealer's" for "cash buyer or", substituted "create an invoice" for "make a correct record", and inserted "agricultural" following "for each"; rewrote (a)4, (c) and (d); in (a)5, inserted "agricultural", substituted "and" for a period at the end; in (a)6, inserted "agricultural" twice, and deleted "NOTE:—Egg Dealer—exception under item 5 of 'Dealers record of transaction'"; in (b), substituted "invoice" for "record"; and deleted (e).

2:72-3.2 Commission merchant's record of transaction; copy to grower

(a) Every commission merchant or commission merchant's agent, upon entering into an agreement with the grower or receiving an agricultural commodity from a grower shall, simultaneously with the entry into the agreement or upon receipt of the agricultural commodity, make an invoice stating in detail for each commodity the following:

1. Name and address of commission merchant;
2. Name and address of grower;
3. Date on which the said agreement is entered into or date upon which the agricultural commodity is received (whichever is earlier);
4. Terms of the sale, how purchased, and charges to be paid by the grower in connection with the sale, including the timeframe for when payment is to be made;
5. The lot number or other identifying mark for each consignment, which shall appear on all tags and other records needed to show what the agricultural commodity actually sold for; and
6. Name of the agricultural commodity, number of containers, size and net weight and grade of agricultural commodity, where applicable.

(b) Where more than one agricultural commodity is purchased, received or obtained from a grower on a particular date, such information may be set forth on a single invoice.

(c) A copy of the invoice containing the above information shall be issued to the grower upon entry into an agreement with the commission merchant or upon receipt of the agricultural commodity by the commission merchant.

(d) The commission merchant shall retain the invoice in his or her possession for a period of not less than one year from the date of the transaction. These records must be presented upon demand to an authorized agent of the New Jersey Department of Agriculture.

Amended by R.2006 d.440, effective December 18, 2006.
See: 38 N.J.R. 3100(a), 38 N.J.R. 5352(a).

In (a), inserted "or commission merchant's agent," and substituted "an invoice" for "a correct record"; in (a)4, inserted "how purchased," and "including the timeframe for when payment is to be made"; in (a)5 and (a)6, inserted "agricultural"; in (a)5, inserted "and" at the end; in (b) and (c), substituted "invoice" for "record"; and in (d), inserted "the invoice" and "or her", substituted "from the date of the transaction" for "the aforementioned records", and inserted the last sentence.

2:72-3.3 Broker's record of transaction, copy to grower

(a) Every broker or broker's agent, upon negotiating the sale of an agricultural commodity on behalf of a grower shall, simultaneously with the negotiation of said sale of the agricultural commodity, make an invoice stating in detail for each agricultural commodity the following:

1. Name and address of broker;
2. Name and address of grower and the purchaser;
3. Date on which the transaction occurred;
4. Name of the agricultural commodity;
5. Terms of the sale;
6. Date of delivery;
7. Price of the sale. If the price to be paid is based upon a market quotation for such agricultural commodity, the record shall specify the date and location of the market to be used in arriving at the purchase price; and
8. The timeframe in which payment should be made.

(b) A copy of the invoice containing the above information shall be issued to both the grower and the purchaser upon negotiation of the sale of the agricultural commodity by the broker.

(c) The broker shall retain the invoice in his possession for a period of not less than one year from the date on the invoice. These records must be presented upon demand to an authorized agent of the New Jersey Department of Agriculture.

Amended by R.2006 d.440, effective December 18, 2006.
See: 38 N.J.R. 3100(a), 38 N.J.R. 5352(a).

Section was "Broker's memorandum of sale". In (a), inserted "or broker's agent", substituted "an invoice" for "a correct record", and inserted "agricultural" following "for each"; in (a)4, inserted "the agricultural"; in (a)7, inserted "agricultural" and substituted "and" for a period at the end; added (a)8; in (b), substituted "invoice" for "record"; and in (c), inserted "the invoice" following "retain", substituted "from the date on the invoice" for "the aforementioned records", and inserted the last sentence.

2:72-3.4 Certified weights for each load of hay, grain and straw

Every commission merchant, dealer, or broker dealing in hay, grain and straw shall obtain a certified vehicle tare weight and gross weight for each load hauled or bought. This vehicle tare weight and gross weight shall be recorded on the invoice required to be made and maintained pursuant to N.J.A.C. 2:72-3.1(a), 3.2(a) and 3.3(a).

Amended by R.2006 d.440, effective December 18, 2006.
See: 38 N.J.R. 3100(a), 38 N.J.R. 5352(a).

Substituted "or broker" for "or cash buyer", inserted "shall" following "straw", and inserted the last sentence.