



## New Mexico Department of Agriculture

Division of Standards and Consumer Services

MSC 3170

New Mexico State University

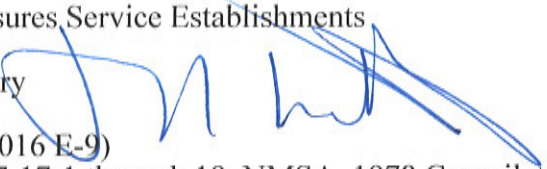
P.O. Box 30005

Las Cruces, NM 88003-8005

575-646-1616, fax: 575-646-2361

December 18, 2015

TO: Full Service Weights and Measures Service Establishments

FROM: Jeff M. Witte, Director/Secretary 

SUBJECT: Bonding Requirements (SCS 2016 E-9)  
Weights and Measures Law (57-17-1 through 19, NMSA, 1978 Compilation)

This external policy supersedes SCS 2014 E-9 dated July 24, 2014.

Pursuant to 21 NMAC 16.5, effective July 1, 1997, adopted under the Weights and Measures Law, each Full Service Weights and Measures Service Establishment, before becoming licensed, must furnish a one thousand dollar (\$1,000) surety bond or other proof of financial responsibility. The following is for your guidance in determining the best alternative for complying with this requirement.

1. **Corporate surety bond** -- payable to the state of New Mexico, in the amount of one thousand dollars (\$1,000) on a form furnished by the New Mexico Department of Agriculture (NMDA). The bond may be for a term of one or more years. Each renewal must be by means of a new bond or continuation certificate. Surety must be an insurance company licensed and authorized to do business in the state of New Mexico.
2. **Personal bond** -- the applicant may, if approved by NMDA, act as their own surety, or may have such other persons, partnerships, joint ventures, and corporations as may be approved by NMDA, act as surety. Prior to any review of the personal bond by NMDA, the surety must furnish the department, at the time of the application for license or renewal of license, a current financial statement in a form satisfactory to NMDA showing the surety has liquid assets of at least five thousand dollars (\$5,000), with which to meet the bond obligation. What constitutes "liquid assets" shall be subject to the sole discretion of NMDA. The financial statement must be audited and certified by a certified public accountant licensed to do business in the state of New Mexico, or in the state of the surety's principal place of business.
3. **Certificate of deposit** -- the applicant may deposit one thousand dollars (\$1,000) in a savings and loan association, bank, or trust company located within the state of New Mexico. The savings and loan, bank, or trust company must be insured by an agency of the federal government and must be approved by NMDA. The certificate shall specifically include a provision that the deposit may not be withdrawn, pledged, or assigned by the applicant to others during the applicant's registration term, and for a period of one (1) year after the expiration of the term of registration. However, the certificate may contain a provision that all interest may be paid directly to the applicant as the interest accrues. During the term of the certificate, the certificate shall be under subconditions that the state of New Mexico or NMDA may order the deposit to be paid to the state or the department. In the event that all or part of the deposit is executed upon by a court or competent jurisdiction, or applied to the department during the term of the

applicant's license, the applicant shall forthwith deposit an additional sum sufficient to maintain the one thousand dollar (\$1,000) minimum under the same conditions for the remainder of the applicant's term of registration and for the period of one (1) year thereafter. The certificate of deposit shall be held by the department and the institution issuing the certificate shall be so advised.

4. **Irrevocable letter of credit** -- the applicant may submit an irrevocable letter of credit in the sum of one thousand dollars (\$1,000) established in favor of the state or NMDA at a bank located within the state of New Mexico. The bank must be insured by an agency of the federal government and must be approved by NMDA. The irrevocable letter of credit shall be available to be drawn on by the state or the department during the applicant's registration term and for a period of one (1) year after the expiration of the term of registration. Should the state or department exercise their right to collect upon the irrevocable letter of credit, these monies shall be immediately delivered to the state or NMDA.
5. **Cash/certified check -- for the interim bonding period, not to exceed ninety (90) days.** The applicant may deposit with NMDA one thousand dollars (\$1,000) in the form of cash or certified check. A certified check shall be drawn on a bank located within the state of New Mexico and made payable to NMDA. The bank must be insured by an agency of the federal government and must be approved by NMDA. The certified check must on its face indicate it is valid, and cannot be canceled for a period of 18 months after the date of issue. The cash or certified check will be held by the department during the interim period until the bonding requirements set by this rule are met.

If you have any questions about this matter, please refer them to:

Joe E. Gomez, Division Director or  
Raymond E. Johnson, Assistant Division Director  
Division of Standards and Consumer Services  
MSC 3170, P.O. Box 30005  
Las Cruces, New Mexico 88003-8005  
(575) 646-1616

JMW/jeg