

This is an amendment to 14.5.8 NMAC, amending Sections 7, 8 and 9, effective March 10, 2022.

**14.5.8.7 DEFINITIONS:** See 14.5.1.7 NMAC for definitions.

- ~~A. "Authority Having Jurisdiction (AHJ)": means the entity with permitting authority in the political subdivision where the property is located, which may be the division, a municipality or a county.~~
- ~~B. "Code": means the statewide construction codes adopted by the commission.~~
- ~~C. "Code Bond": means the construction license bond required in Section 60-13-49 NMSA 1978, for correction of code violations certified by the division.~~
- ~~D. "Completion": means the date of the issuance of a certificate of occupancy or the date of the final inspection by the governmental entity having jurisdiction over code enforcement.~~
- ~~E. "Informal Hearing": means a hearing held pursuant to Subsection C of Section 60-13-27 NMSA 1978.~~
- ~~F. "Formal Hearing": means a hearing held under the ULA, Section 60-1-1 through 60-1-33 NMSA 1978.~~
- ~~G. "Notice of Contemplated Action (NCA)": means the official notice to a licensee that the commission is seeking to take action against a licensee for alleged violations of the CILA or rules promulgated by the commission.~~
- ~~H. "Prime contractor": means the licensed contractor who contracted with the property owner to oversee the construction project and act as the owner's agent as defined in Subsection B of 14.6.6.8 and Subsection A of 14.6.6.9 NMAC.~~
- ~~I. "Sub-contractor": means a licensed contractor who is hired by the prime contractor, regardless if the sub-contractor obtains its own permit or works under the permit obtained by the prime contractor.~~
- ~~J. "Surety": means the insurance company authorized by the NM department of insurance to transact business in New Mexico and acts as the underwriter of a contractor's code bond.~~
- ~~K. "CVD": means a code violation determination report prepared by a division employee.~~
- ~~L. "NOP": means a notice of investigation prepared by a division employee.~~
- ~~M. "ULA": means the Uniform Licensing Act, Sections 60-1-1 through 60-1-33 NMSA 1978.~~
- ~~N. "Gross incompetence or gross negligence": means, but shall not be limited to, a significant departure from the prevailing industry standard, manufacturer specifications or any provision of CILA, ULA or rule adopted by the commission.~~

[14.5.8.7 NMAC - N, 12/13/2014; A, 3/10/2022]

**14.5.8.8 VIOLATIONS:**

- A. An action by a licensee or certificate holder that is contrary to any of the following provisions, the CILA, the Liquefied Petroleum Gas and Compressed Natural Gas Act, Sections 70-5-1 through 70-5-23 NMSA 1978, the Manufactured Housing Act, Sections 60-14-1 through 60-14-20, NMSA 1978, or any rule promulgated by the commission, may subject the licensee to disciplinary action.
  - (1) Gross incompetence or gross negligence.
  - (2) Failure to maintain financial responsibility.
  - (3) Failure to maintain worker compensation insurance.
  - (4) Performing, or holding one- self out as able to perform, professional services beyond the scope of one's license and field or fields of competence.
  - (5) Contracting without displaying his/her full name as it appears on the license issued by the division.
  - (6) Advertising a classification or trade in which a contractor is not licensed by the division.
  - (7) Advertising a service in a false, fraudulent or misleading manner.
  - (8) The use of a false, fraudulent or deceptive statement in any document connected with construction bids, licensing, inspections or permitting.
  - (9) Fraud, deceit or misrepresentation in any application.
  - (10) Violation of any order of the commission.
  - (11) Cheating on an examination for licensure.
  - (12) Failure to cooperate in an investigation.
  - (13) Obstruction of an investigator or an inspector in carrying out their duties.

~~[(13)]~~ (14) Aiding and abetting unlicensed contracting.  
~~[(14)]~~ (15) Contract or job abandonment activity as determined by a court of competent jurisdiction.

~~[(15)]~~ (16) Failure to meet and maintain requirements for crossover licensure for multidisciplinary registration, certificates or licenses.

~~[(16)]~~ (17) Failure to be in compliance with the Parental Responsibility Act.

**B.** If the commission or an informal hearing officer determines that a licensee violated any provision of this subsection, the commission or an informal hearing officer may: issue letter of reprimand, deny, revoke, suspend, or otherwise limit a license; assess an administrative penalty; require licensees to fulfill continuing education hours within limited time constraints; or any combination of the above.

**C. Potential suspension or revocation of a license or certification based on a disqualifying criminal conviction.**

(1) Pursuant to Section 28-2-4 NMSA 1978, the construction industries commission may revoke or suspend a license or certificate if the licensee or certificate holder has been convicted of a felony and the criminal conviction directly relates to the particular trade, business or profession.

(2) The construction industries commission shall not revoke or suspend a license or certificate on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Paragraph (4) of this rule.

(3) In connection with the suspension or revocation of a license or certificate, the commission shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

(a) a conviction that has been sealed, dismissed, expunged or pardoned;

(b) a juvenile adjudication; or

(c) a conviction for any crime other than the disqualifying criminal convictions listed in Paragraph (4) of this rule.

(4) Disqualifying felony criminal convictions that may allow the denial of licensure or certification or the denial of renewal of licensure or certification, whether in New Mexico or their equivalent in any other jurisdiction include:

(a) conviction involving attempts to evade or defeat payment of a tax that is owed or may be lawfully assessed;

(b) conviction involving physical harm to a person or for an attempt, conspiracy or solicitation to commit such crimes;

(c) robbery, larceny, burglary, fraud, forgery, embezzlement, arson, theft of identity, extortion, racketeering or receiving stolen property or for an attempt, conspiracy or solicitation to commit such crimes;

(d) conviction involving bribery of a public officer or public employee or for an attempt, conspiracy or solicitation to commit such crimes.

(5) A licensee or certificate holder may submit a written justification providing evidence of mitigation or rehabilitation for consideration by the construction industries commission should discipline proceed or be anticipated based on a disqualifying criminal conviction.

(6) A licensee or certificate holder has a right, pursuant to the Uniform Licensing Act, to request a hearing should a claim be made against the license or certificate based solely on the disqualifying criminal conviction as enumerated in Subparagraphs (a), (b) and (c) of Paragraph (4) above.

(7) Should the construction industries commission suspend or revoke a license or certificate, based solely upon a disqualifying criminal conviction, the licensee or certificate holder has the right to appeal to the district court pursuant to the rules of civil procedure to determine whether the revocation or suspensions is properly based upon a disqualifying criminal conviction.

(8) Nothing herein prevents the construction industries commission from disciplining a licensee or certificate holder on the basis of a licensee's or individual's conduct to the extent that such conduct violated the Construction Industries Licensing Act or the Liquefied Petroleum and Compressed Natural Gas Act.

regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the licensee or individual was convicted is listed as one of the disqualifying criminal convictions listed in Paragraph (4) above.

[14.5.8.8 NMAC - N, 12/13/2014; A, 3/10/2022]

**14.5.8.9 ADMINISTRATIVE INVESTIGATIONS AND ENFORCEMENT:**

**A. Complaints:** Administrative disciplinary proceedings may be initiated by the filing of a complaint by any person, including members of the commission or division staff, against any licensee, registrant or certified holder. The division will assign an employee to investigate the alleged violations.

**B. Notice of investigations (NOI):** A NOI shall be sent to the address on record according to the licensee's file. The licensee is required to respond within 15 calendar days from the date the NOI was sent by the division and provide the information or documents requested by the commission or division. Failure to respond in writing and supply information or documentation requested may subject the licensee to disciplinary actions.

**C. Investigative [~~subpoenas~~] Subpoenas:** The division director or the commission is authorized to issue investigative subpoenas and to employ experts with regard to pending investigations. The recipient of an investigative subpoena is obligated to reply with the requested information no later than 30 calendar days after receipt of the subpoena unless otherwise specified in the subpoena. Failure to comply with the subpoena may subject a licensee or certificate holder to disciplinary action or be cause for the division or the commission to seek enforcement of the subpoena in a court of law.

[14.5.8.9 NMAC - N, 12/13/2014; A, 3/10/2022]