

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 43 HOISTING OPERATORS
PART 1 GENERAL PROVISIONS

16.43.1.1 ISSUING AGENCY: The Construction Industries Division of the Regulation and Licensing Department.

[16.43.1.1 NMAC - N, 03/31/15]

16.43.1.2 SCOPE: This rule applies to all hoisting operators engaged in construction, excavation or demolition activities within the state of New Mexico.

[16.43.1.2 NMAC - N, 03/31/15]

16.43.1.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to Section 60-15-6 NMSA 1978, of the Hoisting Operators Safety Act (60-15-1 to -15 NMSA 1978).

[16.43.1.3 NMAC - N, 03/31/15]

16.43.1.4 DURATION: Permanent.

[16.43.1.4 NMAC - N, 03/31/15]

16.43.1.5 EFFECTIVE DATE: March 31, 2015, unless a later date is cited at the end of a section.

[16.43.1.5 NMAC - N, 03/31/15]

16.43.1.6 OBJECTIVE: To promote the general welfare and protect the lives and property of the people of New Mexico by requiring persons operating hoisting equipment to be trained and licensed when employed in construction, demolition or excavation work.

[16.43.1.6 NMAC - N, 03/31/15]

16.43.1.7 DEFINITIONS:

A. Act means the Hoisting Operators Safety Act (Sections 60-15-1 to -15 NMSA 1978).

B. CID means the construction industries division.

C. Construction means the act or process of constructing or being constructed.

D. Council means the hoisting operators licensure examining council.

E. Demolition means the act or process of wrecking, razing or destroying.

F. Department (or "RLD") means the New Mexico regulation and licensing department.

G. Direct supervision means the training supervisor being in direct visual sight to their trainee for at least the first one hundred (100) hours of supervised time, and thereafter being in close proximity and on the same jobsite with the trainee, with the supervisor being directly responsible for the trainee.

H. Excavation means the act of digging, hollowing out or removing materials.

I. HSD means the New Mexico human services department.

J. In-house training course means a course in hoisting equipment operations approved by the council and offered by an employer, person or organization that results in a trainee receiving an in-house hoisting operation card pursuant to (Section 60-15-7 NMSA 1978).

K. OSHA means the United States department of labor occupational safety and health administration.

L. Stipulated agreement means a binding agreement between the department and a person, licensee or entity engaged in activity governed by the act to resolve violations or alleged violations of the act.

M. Superintendent means the superintendent of the NM regulation and licensing department.

N. ULA means the New Mexico Uniform Licensing Act (Sections 61-1-1 to -33 NMSA 1978).

[16.43.1.7 NMAC - Rp, 16.43.2.7 NMAC, 03/31/15]

16.43.1.8 PARENTAL RESPONSIBILITY ACT COMPLIANCE:

A. Compliance required: Any applicant or licensee must be in compliance with the Parental Responsibility Act, (Sections 40-5A-1 to -13 NMSA 1978)

B. Denial, suspension or revocation: Upon receipt from HSD of a certified list of persons not in compliance with a judgment and order for child support, the department shall match the certified list against licensees and applicants. The department shall initiate proceedings under the ULA to deny an initial application or renewal application, or to suspend or revoke an Active license for noncompliance with a judgement or order for

child support. If a license is suspended or revoked for noncompliance with the Parental Responsibility Act, the final order shall state that the license may be reinstated at any time by providing the department with a certified statement of compliance from HSD.

C. Proof of compliance: Applicants and licensees may prove compliance with the Parental Responsibility Act as follows:

(1) An applicant for initial licensure or renewal that provides a certified statement of compliance from HSD within thirty (30) days from the date of notice that their application is subject to denial for noncompliance with the Parental Responsibility Act shall have their application reinstated for consideration.

(2) A licensee that has received notice that their license is subject to suspension or revocation may provide a certified statement of compliance to the department at anytime and the department will dismiss the proceedings.

(3) A licensee that has had their license suspended or revoked shall have their license reinstated upon providing the department with a certified statement of compliance.

[16.43.1.8 NMAC - Rp, 16.43.2.18 NMAC, 03/31/15]

16.43.1.9 DISCIPLINE: Every licensee or applicant shall be afforded notice and the opportunity to be heard in accordance with the ULA before the superintendent may deny an application, place probationary limitations on a license, suspend or revoke a license or assess an administrative penalty against a licensee. Hearings will be held by a hearing officer, which may be a member of the council or a department employee designated by the council, or by the full membership of the council. The council shall review hearing officer reports and make disciplinary recommendations to the superintendent.

A. In addition to any violation of the act, the following may be grounds for disciplinary action:

(1) refusal of a licensee to comply with a stop work order issued by the department;
(2) making a material misstatement or misrepresentation in an application for initial licensure or renewal;

(3) intentionally making a material misstatement to the department during an official investigation;

(4) aiding or abetting another in violating provisions of the act or a rule adopted pursuant to the act;

(5) altering or falsifying a license issued by the department;
(6) failing or refusing to furnish the department, its investigators or its representatives information requested in the course of an official investigation by the department; or

(7) operating hoisting equipment in a negligent or reckless manner as determined by the department.

B. Stipulated agreement: In lieu of a hearing, the department and the licensee may enter into a stipulated agreement to resolve any alleged violations.

C. Surrender of license after suspension or revocation: Upon suspension or revocation of a license, or as soon thereafter as practicable, the licensee shall surrender possession of their license to the department and the department will place the license in the licensee's file.

D. Appeal: A licensee or applicant may appeal a final order in accordance with the ULA pursuant to (Sections 60-15-11 and 60-15-12 NMSA 1978).

[16.43.1.9 NMAC - N, 03/31/15]

16.43.1.10 FINES: In accordance with Section 60-15-11(F) NMSA 1978, the superintendent may issue a citation and a fine to an individual or business that violates the act, or any regulation adopted pursuant to the act, as long as the fine does not exceed limitations set pursuant to Section 60-15-13 NMSA 1978. Unlicensed hoisting operator: If a fine is assessed against an unlicensed operator, the superintendent may provide the unlicensed operator the option to respond to the order assessing the fine and enter into a stipulated agreement to resolve the violation by paying a lesser fine under the condition that the unlicensed operator admits guilt and agrees to become licensed.

[16.43.1.9 NMAC - Rp, 16.43.2.19 NMAC, 03/31/15]

16.43.1.11 REPORT OF INCIDENT:

A. Any in-house hoisting operator card holder or licensee involved in any incident that involves a death, or an injury to three (3) or more individuals, shall submit a report as required under applicable state or federal safety laws.

B. Any in-house hoisting operator card holder or licensee involved in any incident that involves a personal injury requiring a hospital stay of seventy-two (72) hours or more, or any incident that involves damage to property or equipment of one thousand (\$1,000) dollars or more, shall notify the department within ninety-six (96) hours of the incident.

C. Failure to report an incident may result in disciplinary actions, penalties or fines.

D. Upon receipt of a report regarding an incident that may have involved a crane operator or hoisting operator, the department, council or its designee may gather information on the incident and may assign an inspector or investigator to visit the site of the incident, investigate the cause(s) of the incident, and submit a written report to the council summarizing their findings.

E. The council may review any incident investigation findings and make a recommendation to the department.

[16.43.1.11 NMAC - Rp, 16.43.2.20 NMAC, 03/31/15]

16.43.1.12 INSPECTION/INVESTIGATION:

A. Inspection services: The department may contract for inspection services or may enter into agreement(s) with any private or state agency such as, but not limited to, NM-OSHA or the CID to provide inspection services regarding hoisting operators.

B. Investigation services: The department may contract for investigation services or may enter into agreement(s) with any private or state agency such as, but not limited to, NM-OSHA or the CID to provide investigation services in order to investigate the cause(s) of any accident involving a hoisting operator or hoisting equipment.

[16.43.1.12 NMAC - Rp, 16.43.2.21 NMAC, 03/31/15]

16.43.1.13 HOISTING OPERATORS LICENSURE EXAMINING COUNCIL:

A. Establishment of council: The hoisting operators licensure examining council is established in accordance with (Section 60-15-14 NMSA 1978).

B. Elections: At the first council meeting of each calendar year, the council shall elect, by majority vote of the members present, the following officers: chair, vice-chair, and secretary. No officer shall be elected more than twice in succession to the same office. If an officer leaves the council for any reason, a successor officer shall be elected, by majority vote of the members present at the next meeting of the council, to serve the remainder of the term. Any member absent from three consecutive regularly scheduled council meetings shall be deemed to have resigned from the council.

C. Compensation: Council members may be reimbursed as provided in the Per Diem and Mileage Act, Sections 10-8-1 to -8 NMSA 1978, and shall receive no other compensation, perquisite, or allowance.

D. Meetings: The council shall meet no less than quarterly. A meeting shall be convened at the request of the department, call of the chair, or upon written request addressed to the chair of two (2) council members. Meetings shall be held in compliance with the requirements of the Open Meetings Act (10-15-1 to -4 NMSA 1978). A quorum shall consist of at least half of the duly appointed commissioners at the time of a meeting.

E. Telephone attendance: If it is difficult or impossible for a member of the council to attend a meeting in person, the member may participate through a telephone conference. Each council member participating by telephone conference must be identified when speaking, all participants must be able to hear each other at the same time, and members of the public attending the meeting must be able to hear any member of the council who speaks during the meeting.

F. Public records: The council and department shall comply with the Inspection of Public Records Act, (Sections 14-2-1 to -12 NMSA 1978). The council's administrator shall be the custodian of the council's records.

G. Duties: In addition to obligations under Section 60-15-14(B), duties of the council shall include:

- (1) holding hearings in accordance with the provisions of ULA;
- (2) examining proposed in-house training course providers and refresher course providers to determine whether they meet the requirements of the act and these rules, and publishing and updating lists of approved training providers;
- (3) making recommendations to the department concerning any aspect of licensing under the act or these rules, including recommending new council members to the superintendent;

[16.43.1.13 NMAC - Rp, 16.43.2.23 NMAC, 03/31/15]

16.43.1.14 FEES:

- A. Fee payments:**
- (1) All checks to the department from applicants and licensees shall be made payable to "The New Mexico Hoisting Program."
 - (2) All payments shall be delivered to the department's office.
 - (3) All fees and payments shall be refundable in whole or in part.
- B. Application fee:** The application fee for a license in any classification or for a change in classification shall be fifty dollars(\$50). The application and initial fees must be submitted with the completed application.
- C. Initial license fee:**
- (1) An applicant accepted for licensure as a class I hoisting operator shall pay an initial fee of seventy five dollars (\$75) for a two (2) year license.
 - (2) An applicant accepted for licensure as a class II hoisting operator shall pay an initial fee of seventy five dollars (\$75) for a two (2) year license.
 - (3) An applicant accepted for licensure as a class III hoisting operator shall pay an initial fee of twenty-five dollars (\$25) for a two (2) year license.
- D. Renewal license fee:**
- (1) The fee for renewal of a class I hoisting operator license is seventy-five dollars (\$75). The renewed license shall be valid for two (2) years from the expiration date of the previous license.
 - (2) The fee for renewal of a class II hoisting operator license is seventy-five dollars (\$75). The renewed license shall be valid for two (2) years from the expiration date of the previous license.
 - (3) The fee for renewal of a class III hoisting operator license is twenty-five dollars (\$25). The renewed license shall be valid for two (2) years from the expiration date of the previous license.
- E. Late fee:** Unless a renewal application is filed on or before the expiration date, a late fee of five dollars (\$5) may be charged in addition to a renewed license fee for each month that the renewal application is past due.
- F. Reinstatement fee:** A license that is not renewed within six (6) months of its expiration may be reinstated if a renewal application is submitted. The reinstatement fee is one hundred dollars (\$100) and is assessed in addition to any renewal or late fee.
- G. General examination fee:** The fee for an initial or subsequent general examination for any classification shall be set by the department in consultation with the examining vendor approved by the council, but in no event shall the fee exceed one hundred and fifty (\$150) dollars.
- H. Law and safety examination fee:** The fee for an initial or subsequent law and safety examination shall be set by the department in consultation with the testing agency, but in no event shall the fee exceed twenty five dollars (\$25).
- I. Practical examination fee:** The fee for initial and subsequent practical examinations shall be set between the applicant and the examining vendor approved by the council.
- J. Duplicate license fee:** The fee for the replacement of a lost, destroyed or mutilated license, or for the issuance of a replacement license shall be ten dollars (\$10).
- K. In-House training course fee:**
- (1) Any employer, person or organization seeking approval of its in-house training course shall submit a three hundred dollar (\$300) application fee.
 - (2) Upon course approval from the council, an employer, person or organization shall submit a certification fee of four hundred dollars (\$400).
 - (3) Any employer, person or organization wishing to renew its course certification shall submit a three hundred dollar (\$300) renewal fee.
- L. Returned check fee:** Any check that fails to clear the bank, or is returned unpaid by the bank for any reason, shall be assessed a thirty-five dollar (\$35) fee. A returned check may cause any license issued or to be issued, or any examination scheduled or to be scheduled to be immediately suspended until proper payment is received in full by the department, including any applicable fees as set out in this section.
- M. Administrative fees:**
- (1) The fee for photocopies of documents shall be twenty-five cents (\$0.25) per page.
 - (2) The fee for certified copies of documents shall be seventy-five cents (\$0.75) per page.

[16.43.1.14 NMAC - Rp, 16.43.2.24 NMAC, 03/31/15]

HISTORY OF 16.43.1 NMAC: [RESERVED]