

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 43 HOISTING OPERATORS
PART 2 HOISTING OPERATORS SAFETY; HOISTING OPERATORS CODE

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

[16.43.2.1 NMAC - Rp, 16 NMAC 43.2.1, 07/30/06]

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

[16.43.2.2 NMAC - Rp, 16 NMAC 43.2.2, 07/30/06]

16.43.2.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to Section 60-15-6 NMSA 1978, of the Hoisting Operators Safety Act (60-15-1 to 60-15-14 NMSA 1978).

[16.43.2.3 NMAC - Rp, 16 NMAC 43.2.3 07/30/06]

16.43.2.4 DURATION: Permanent; until later amended, repealed or replaced.

[16.43.2.4 NMAC - Rp, 16 NMAC 43.2.4, 07/30/06]

16.43.2.5 EFFECTIVE DATE: 07/30/06, unless a later date is cited at the end of a section.

[16.43.2.5 NMAC - Rp, 16 NMAC 43.2.5, 07/30/06]

16.43.2.6 OBJECTIVE: The objective of the Hoisting Operators Safety Act (60-15-1 to 60-15-14 NMSA 1978) [and 16.43.2 NMAC] is 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.

[16.43.2.6 NMAC - Rp, 16 NMAC 43.2.6, 07/30/06]

16.43.2.7 DEFINITIONS:

A. Act means the Hoisting Operators Safety Act (60-15-1 to 60-15-14 NMSA 1978).

B. ASME means the American society of mechanical engineers previously.

ANSI means the American national standards institute.

C. Demolition means the razing or destruction of a structure.

D. Direct supervision means the training supervisor being in close proximity to his trainee for at least the first eighty (80) hours of supervised time, and thereafter being in visual contact with the trainee, with the supervisor being directly responsible for the trainee.

E. HSD means human services department.

F. NCA means notice of contemplated action.

G. OSHA means occupational safety and health administration.

H. Seat time is defined in Subsection K of Section 60-15-3 NMSA 1978 of the act. Included as "seat time" is time spent in preparing a written lift plan and hoisting and rigging calculations.

I. Stipulated agreement means a binding agreement between the department and the operator in violation in which the operator agrees to amicably resolve certain matters and forego expensive and time-consuming litigation by entering into an agreement.

J. ULA means Uniform Licensing Act (61-1-1 to 61-1-33 NMSA 1978).

K. Additional definitions: For additional definitions, see Section 60-15-3 of the act.

[16.43.2.7 NMAC - Rp, 16 NMAC 43.2.7, 07/30/06]

16.43.2.8 LICENSE:

A. License required: No person shall operate hoisting equipment in construction, demolition or excavation work when the hoisting equipment is used to hoist or lower individuals or material unless the person is licensed under the act or is exempt pursuant to Subsection M of Section 60-15-3 NMSA 1978.

B. Description of license: The license issued by the department shall include, as a minimum: license number; expiration date of license; license classification and endorsement(s); licensee's name, address, and signature; and authorized signature of the designated representative of the issuing agency.

- C. *Initial license period:*** An initial license shall be valid for two (2) years from the date of issuance.
- D. *Examination requirements:*** A person must take the written general examination and law and safety examination as approved by the council. A person must also take a practical examination as approved by the council if the experience necessary to operate hoisting equipment is not met as provided in Paragraph (4) of Subsection A and Paragraph (4) of Subsection B of Section 60-15-7 NMSA 1978.
- E. *Validity:*** A license issued under the act and these rules is valid throughout the state of New Mexico. A license is valid only for the classification and endorsement(s) for which it is issued.
- F. *Possession:*** The licensee must have their license in their possession and on their person at all times while engaged in the operation of hoisting equipment or any activity covered by the act.
- G. *Proof of license:*** If a hoisting operator is asked for proof of licensure by an inspector or investigator designated by the department, the operator shall produce his hoisting operator's license accompanied by a current motor vehicle driver's license or photo identification card as verification.
- H. *Non-assignable and non-transferable:*** A license may be used legally only by the person to whom it is issued; it may not be transferred or assigned.
- I. *Lost license:*** If a license is lost, destroyed or mutilated, the licensee shall immediately deliver to the department a written statement setting forth the circumstances surrounding the loss, destruction or mutilation of the license, and a fee as set forth in Subsection J of 16.43.2.24 NMAC of these rules for the issuance of a duplicate license.

[16.43.2.8 NMAC - Rp, 16 NMAC 43.2.8.1, 07/30/06]

16.43.2.9 IN-HOUSE TRAINING:

- A.** A person who has successfully completed an in-house training course approved by the council may operate hoisting equipment without a license as required by 16.43.2.8 NMAC for one year after successful completion of that course. At the expiration of that one year, the person shall be licensed pursuant to Section 60-15-7 NMSA 1978, except that the requirement for passing a written general examination pursuant to that section shall be waived.
- B.** An individual that has successfully completed an in-house training course approved by the council prior to the effect of 16.43.2 NMAC (July 30, 2006) shall be licensed no later than June 30, 2007 pursuant to Section 60-15-4 NMSA 1978 of the act.
- C. *Employer responsibility:*** An employer choosing to exempt its employees from the licensing requirements of the act for that one year pursuant to Subsection A of 16.43.2.9 NMAC by offering an in-house training course for its employees, as provided for in Section 60-15-4 NMSA 1978 of the act, shall be responsible for the qualifications, capability, experience, physical condition, and actions of its hoisting operators.
- D. *Standards for approval of training course:*** The council shall determine whether a course is industry-recognized and based on ASME and OSHA standards for hoisting operators.
- E. *Approval of training course:***
 - (1) Any employer, person or organization wishing to offer an in-house training course to hoisting operator companies in this state shall first obtain written approval of the course from the council. The request must be submitted on a council approved form containing a complete description of the program content and examination and instructor(s) qualifications and a non-refundable application fee as approved by the council.
 - (2) After review of the documents submitted, the council shall indicate in writing its approval or reason for disapproval of the course. The council shall notify the employer, person or organization in writing of the approval or disapproval of the proposal within 90 days of submission of the course description and instructor(s) qualifications. Upon approval, the employer, person or organization shall submit to the council a non-refundable certification fee as approved by the council.
 - (3) The certification shall be for a period of two (2) years.
 - (4) Any employer, person or organization wishing to renew certification shall submit documentation and fees as approved by the council.
 - (5) Any employer, person or organization offering a council approved in-house training course prior to July 30, 2006 shall be allowed to continue offering that in-house training program until June 30, 2007, at which point, the approved training provider shall be subject to all renewal procedures and rules as outlined in Subsection K of 16.43.2.24 NMAC.
- F. *List of approved training courses:*** The council shall publish a list of all approved providers and approved instructor(s) for each course and shall update that list whenever any party is added to or deleted from the list.

G. *Certificates/certificate holders:* Any entity granted an exemption for in-house training of its hoisting operators under this section shall:

(1) issue a wallet-size certificate to each of its hoisting operators who successfully completes the in-house training course; such certificate shall contain, at a minimum: name, address and authorized signature of entity; name, address, and signature of certificate-holder; certificate number; classification; date of issuance and date of expiration;

(2) furnish in writing to the department a list of its certificate-holders and the number and date of issuance of each certificate within thirty (30) days of the completion of training and shall furnish immediately in writing to the department any addition to or deletion from the list.

H. *Possession:* A hoisting operator who is issued an exemption certificate shall have the certificate in his possession and on his person at all times while engaged in the operation of hoisting equipment or any activity covered by this act.

I. *Non-assignable and non-transferable:* An exemption certificate shall be valid only for the person to whom it is issued; it may not be transferred or assigned.

J. *Validity:* An exemption certificate shall be valid for no more than one (1) year and shall be non-renewable.

[16.43.2.9 NMAC - Rp, 16 NMAC 43.2.8.2, 07/30/06]

16.43.2.10 APPLICATION PROCEDURE:

A. *Application for licensure:*

(1) Each applicant for licensure must submit appropriate documentation as specified in 16.43.2.11 NMAC; 16.43.2.12 NMAC; or 16.43.2.13 NMAC of these rules to the department.

(2) The filing date of the application shall be deemed to be the date the envelope is postmarked or, if hand-delivered, the date it is received and date-stamped in the department office.

B. *Period of validity:* If for any reason all requirements for licensure are not completed by the applicant within six (6) months after the date of filing his application, the application shall be deemed withdrawn. The applicant then shall be required to reapply for licensure and pay a new application fee.

C. *Licensure in lesser classification:* If the department finds that an applicant is ineligible for licensure in the applied-for classification because of experience or other deficiency, the department may offer the applicant the opportunity of licensure in a lesser classification. The department shall notify the applicant in writing of such offer and, if the applicant wishes to accept licensure in the lesser classification, the applicant must notify the department in writing of the applicant's acceptance within thirty (30) days after receipt of the department's written offer.

[16.43.2.10 NMAC - Rp, 16 NMAC 43.2.8.3, 07/30/06]

16.43.2.11 CLASS I HOISTING OPERATOR:

A. *Scope of work:*

(1) A class I hoisting operator shall have an endorsement on the applicant's license, based on experience, authorizing him to operate any size or weight of one or more of the following types of cranes: conventional, hydraulic, and/or tower.

(2) A class I hoisting operator may perform the work of a class II or class III hoisting operator without being licensed in either of those classifications.

B. *Requirements for licensure:*

(1) *Application:* applicant must submit to the department a completed application form.

(2) *Fee:* applicant must submit to the department applicable fee(s) as set out in 16.43.2.24 NMAC of these rules.

(3) *Age requirement:* the applicant must be at least twenty-one (21) years of age.

(4) *Experience requirement:*

(a) The applicant must have at least three (3) years of experience within the past five (5) years in operating hoisting equipment. Applicant's experience must include at least five hundred (500) hours of seat time on a crane of the type for which he seeks the initial endorsement. For a conventional crane endorsement, the applicant's experience must have been with conventional cranes with a manufacturer's rating capacity equal to or greater than fifty (50) tons and a boom length of one hundred (100) feet. For a hydraulic crane endorsement, the applicant's experience must have been with hydraulic cranes with a manufacturer's rating capacity equal to or

greater than one hundred (100) tons and a boom length of one hundred (100) feet. For a tower crane endorsement, the applicant's experience must have been with tower cranes of any size or type.

(b) If the applicant cannot document the required experience, he may demonstrate his operating competency by passing a practical examination as approved by the council.

(c) A class I hoisting operator who seeks an additional endorsement on his license shall keep a log book of his seat time operating the appropriate type of hoisting equipment and must accumulate fifty (50) hours of seat time under the direct supervision of either a class I hoisting operator with the proper endorsement or the manufacturer's representative.

(d) A class II or class III hoisting operator who seeks an initial endorsement as a class I hoisting operator shall keep a log book of his seat time operating the appropriate type of hoisting equipment and must accumulate five hundred (500) hours of seat time under the direct supervision of a class I hoisting operator with the proper endorsement.

(5) *Verification of work experience.*

(a) Applicant shall furnish written statement(s) from present or former supervisor(s) or employer(s) verifying that the applicant has had, in total, at least three (3) years of experience within the past five (5) years, totaling at least 500 hours, in operating the type(s) of hoisting equipment specified above. The statement(s) shall contain at least the following information relating to the applicant: dates of employment, type(s) and tonnage(s) of hoisting equipment operated, and number of hours of operation of each type of equipment.

(b) If applicant is a class I hoisting operator seeking an additional endorsement on his license, applicant shall present to the department his log book showing at least fifty (50) hours of seat time operating the type of equipment for which he seeks an additional endorsement. The seat time must have been under the direct supervision of either a class I hoisting operator with the proper endorsement or the manufacturer's representative.

(c) A class II or class III hoisting operator who seeks an initial endorsement as a class I hoisting operator shall present to the department his log book showing at least five hundred (500) hours of seat time operating the type of equipment for which he seeks the endorsement. The seat time must have been under the direct supervision of a class I hoisting operator with the proper endorsement.

(6) *Proof of physical condition:*

(a) The applicant shall furnish to the department a current United States department of transportation (DOT) certificate of physical examination signed by a licensed physician.

(b) The applicant shall furnish to the department a report from a United States department of transportation (DOT) certified drug testing laboratory showing that the applicant has passed a DOT drug screen within the past twelve (12) months.

(7) *Proof of compliance with Parental Responsibility Act:* If applicant's name appears on a certified list from the New Mexico HSD of persons not in compliance with a judgment and order for child support, applicant must present to the department a statement of compliance from HSD.

(8) *General examination:* Except for an applicant licensed under the provisions of Subsection A of 16.43.2.9 NMAC of these rules (in-house training), the applicant must demonstrate professional competency by passing a written general examination selected and approved by the council.

(9) *Law and safety examination:* The applicant must demonstrate knowledge of the act and these rules by passing a written law and safety examination selected and approved by the council. Such examination will include questions regarding the law, load charts, and hand signals.

[16.43.2.11 NMAC - Rp, 16 NMAC 43.2.8.4, 07/30/06]

16.43.2.12 CLASS II HOISTING OPERATOR:

A. *Scope of work:*

(1) A class II hoisting operator may operate a hydraulic crane of up to one hundred (100) tons lifting capacity with a maximum boom length of one hundred fifty (150) feet, regardless of mounting or means of mobility.

(2) A class II hoisting operator may perform the duties of a class I hoisting operator without being licensed in that classification *only* while working under the direct supervision of a class I hoisting operator with the proper endorsement.

(3) A class II hoisting operator may perform the work of a class III hoisting operator without being licensed in that classification.

B. *Requirements for licensure:*

(1) *Application:* Applicant must submit to the department a completed application form.

- (2) *Fee:* Applicant must submit to the department applicable fee(s) as set out in 16.43.2.24 NMAC of these rules.
- (3) *Age requirement:* The applicant must be at least eighteen (18) years of age.
- (4) *Experience requirements:*
- (a) The applicant must have at least two (2) years of experience within the past five (5) years in operating hydraulic cranes over ten (10) tons and up to one hundred (100) tons lifting capacity with a maximum boom length of one hundred fifty (150) feet, regardless of mounting or means of mobility. Applicant's experience must include at least five hundred (500) hours of seat time on a crane of the specified type.
- (b) If the applicant cannot document the required experience, the applicant may demonstrate his operating competency by passing a practical examination as approved by the council.
- (c) A class III hoisting operator who seeks licensing as a class II hoisting operator must have at least five hundred (500) hours of seat time operating the appropriate type of equipment or six thousand (6,000) documented hours of experience under the direct supervision of a class II or class I hoisting operator.
- (5) *Verification of work experience:*
- (a) Applicant shall submit written statement(s) from present or former supervisor(s) or employer(s) verifying that the applicant has had, in total, at least two (2) years of experience within the past five (5) years, totaling at least five hundred (500) hours, in operating the type of hoisting equipment specified above. The statement(s) shall contain at least the following information relating to the applicant: dates of employment, type(s) and tonnage(s) of hoisting equipment operated, and number of hours of operation of each type of equipment.
- (b) If applicant is a class III hoisting operator seeking to qualify as a class II hoisting operator, applicant must present his log book verifying at least five hundred (500) hours of seat time operating the appropriate type of equipment or documentation of six thousand (6,000) hours of experience under the direct supervision of a class II or class I hoisting operator.
- (6) *Proof of physical condition:*
- (a) The applicant shall furnish to the department a current United States department of transportation (DOT) certificate of physical examination signed by a licensed physician.
- (b) The applicant shall furnish to the department a report from a United States department of transportation (DOT) certified drug testing laboratory showing that the applicant has passed a DOT drug screen within the past twelve (12) months.
- (7) *Proof of compliance with Parental Responsibility Act:* If applicant's name appears on a certified list from the New Mexico HSD of persons not in compliance with a judgment and order for child support, applicant must present to the department a statement of compliance from HSD.
- (8) *General examination:* Except for an applicant licensed under the provisions of 16.43.2.9 NMAC of these rules (in-house training), the applicant must demonstrate professional competency by passing a written general examination selected and approved by the department.
- (9) *Law and safety examination:* The applicant must demonstrate knowledge of the act and these rules by passing a written law and safety examination selected and approved by the council. Such examination will include questions regarding the law, load charts, and hand signals.
[16.43.2.12 NMAC - Rp, 16 NMAC 43.2.8.5, 07/30/06]

16.43.2.13 CLASS III HOISTING OPERATOR:

- A. Scope of work:**
- (1) A class III hoisting operator may work as an apprentice, trainee, or crane oiler or driver, under the direct supervision of a class I or class II hoisting operator.
- (2) A class III hoisting operator may perform the duties of a class I or class II hoisting operator without being licensed in that classification *only* while working under the direct supervision of a class I or class II hoisting operator.
- B. Requirements for licensure:**
- (1) *Application:* Applicant must submit to the department a completed application form.
- (2) *Fee:* Applicant must submit to the department applicable fees as set out in 16.43.2.24 NMAC of these rules.
- (3) *Age requirement:* The applicant must be at least eighteen (18) years of age.
- (4) *Experience requirements:* No prior experience in the hoisting industry is necessary.
- (5) *Proof of physical condition:*

(a) The applicant shall furnish to the department a current United States department of transportation (DOT) certificate of physical examination signed by a licensed physician.

(b) The applicant shall furnish to the department a report from a United States department of transportation (DOT) certified drug testing laboratory showing that the applicant has passed a DOT drug screen within the past twelve (12) months.

(6) *Proof of compliance with Parental Responsibility Act:* If applicant's name appears on a certified list from the New Mexico's HSD of persons not in compliance with a judgment and order for child support, applicant must present to the department a statement of compliance from HSD.

(7) *Law and safety examination:* The applicant must demonstrate knowledge of the act and these rules by passing a written law and safety examination selected and approved by the council. Such examination will include questions regarding the law and hand signals.

[16.43.2.13 NMAC - Rp, 16 NMAC 43.2.8.6, 07/30/06]

16.43.2.14 LOG BOOK:

A. *Class I hoisting operator:* A log book must be kept by any class I hoisting operator who seeks an additional endorsement on his class I license.

B. *Class II hoisting operator:* A log book must be kept by any class II hoisting operator who seeks to become a class I hoisting operator.

C. *Class III hoisting operator:* A log book must be kept by any class III hoisting operator who seeks to become a class I or class II hoisting operator.

D. *Contents of log book:* The log book shall contain, at a minimum: name of person maintaining the log, type and tonnage of equipment operated, boom length, date and specific hours of operation, total hours of operation, printed name of direct supervisor, and signature of supervisor for that time period.

[16.43.2.14 NMAC - Rp, 16 NMAC 43.2.8.7, 07/30/06]

16.43.2.15 EXAMINATIONS:

A. *Testing services:* the department may contract for testing services or may enter into agreement(s) with any private or state agency to provide testing services for licensure of hoisting operators.

B. *General examination:*

(1) A written general examination selected and approved by the council shall be scheduled at least monthly; the dates and locations of the examinations shall be determined by the examining vendor approved by the council.

(2) The written general examination shall test the applicant's knowledge of hoisting equipment operation, its care and maintenance, inspection and set-up, and related safety practices.

(3) The written general examination shall be required to be taken and passed by all applicants for hoisting operator licenses in any classification, unless not required under 16.43.2.9 NMAC of these rules.

(4) A passing grade shall be 75 percent or better.

C. *Law and safety examination:*

(1) A written law and safety examination selected and approved by the council shall be scheduled at least monthly; the dates and locations of the examinations shall be determined by the examining vendor approved by the council.

(2) The law and safety examination shall test the applicant's knowledge of the act and these rules. Such examination for class I and class II applicants will include questions regarding load charts and hand signals. Such examination for class III applicants will include questions regarding hand signals.

(3) All applicants for hoisting operator licenses in any classification, including applicants applying under 16.43.2.9 NMAC of these rules, are required to take and pass the law and safety examination.

(4) A passing grade shall be 75 percent or better.

D. *Practical examination:*

(1) The practical exam shall be approved by the council.

(2) If an applicant passes the general examination and the law and safety examination but does not meet the experience requirements set out in 16.43.2.11 or 16.43.2.12 NMAC of these rules and the applicant elects not to accept a lesser classification as provided for in Subsection C of 16.43.2.10 NMAC of these rules, then the applicant shall be required to pass a practical examination.

(3) The practical examination shall demonstrate the applicant's competence in the safe operation of hoisting equipment. The applicant shall satisfactorily demonstrate the ability to perform common tasks required of a

hoisting operator, including but not limited to inspection and maintenance procedures, reading and understanding load capacity charts, safely raising and lowering a load, raising and lowering the boom, swinging the crane with a suspended load, braking, and understanding hand signals.

(4) A practical examination shall be scheduled by the examining vendor approved by the council.

E. *Re-scheduling of examination:*

(1) An applicant who is unable to appear for a scheduled law and safety examination must notify the examining vendor approved by the council in a timely manner, in writing, that the applicant will be unable to take the examination at the scheduled time; the applicant then may apply to take the examination at another scheduled time by submitting a written request to the examining vendor approved by the council to re-schedule the examination. No additional examination fee will be required.

(2) An applicant who does not appear for a scheduled law and safety examination for any reason and does not notify the department or the examining vendor as approved by the council in a timely manner, in writing, shall forfeit the examination fee already paid. If the applicant wishes to schedule an examination at another time, the applicant must submit a written request to the examining vendor approved by the council and must pay a new examination fee.

F. *Re-examination:*

(1) An applicant who fails an initial or subsequent required examination must wait at least seven (7) days before the applicant shall be permitted to take a second or subsequent general examination or law and safety examination.

(2) Every retest or new test, whether general, law and safety or practical, shall require payment of a new examination fee.

G. *Cheating on examination:* Any applicant cheating on an examination, as determined by the tester or examining vendor approved by the council, will not be accorded a passing grade on that examination; further, the applicant will not be permitted to reapply to take that same examination or to apply for any other examination required for a hoisting operator's license in any classification for a period of one (1) year from the date of such infraction.

[16.43.2.15 NMAC - Rp, 16 NMAC 43.2.8.9, 07/30/06]

16.43.2.16 CHANGES IN STATUS:

A. *Change of address:* A licensee shall report to the department in writing any change of permanent address within thirty (30) days of such change.

B. *Change of name:* If a licensee legally changes his or her name and wishes his or her license to reflect that name change, the licensee shall submit the following to the department: proof of the name change, and a fee in accordance with Subsection J of 16.43.2.24 NMAC of these rules.

C. *Change of classification:* An applicant for a hoisting operator's license in a classification different from the classification currently held or for an additional endorsement shall apply on forms supplied by the department.

[16.43.2.16 NMAC - Rp, 16 NMAC 43.2.8.10, 07/30/06]

16.43.2.17 LICENSE RENEWAL:

A. *Timely renewal:* It is the duty and responsibility of the licensee to timely renew his or her license on forms prescribed by the department.

B. *Filing date:* The filing date of the renewal application shall be deemed to be the date the envelope is postmarked or, if hand-delivered, the date it is received and date-stamped in the department's office.

C. *Refresher course:*

(1) Every two (2) years from the date of initial licensure, the licensee must submit proof of having successfully completed an industry-recognized and council-approved refresher course for hoisting operators. The course must have been completed no more than twelve (12) months prior to the filing date of the licensee's renewal application.

(2) The council shall publish a list of all approved refresher courses and shall update that list whenever any party is added to or deleted from the list.

D. *Documentation required for renewal of license:*

(1) *Renewal form:* Applicant must submit to the department a completed renewal form.

(2) *Fee:* Applicant must submit to the department application fee(s) as set out in Subsection D of 16.43.2.24 NMAC of these rules.

(3) *Proof of physical condition:* The required proof shall be the same as for an initial license.

(4) *Proof of compliance with Parental Responsibility Act:* The required proof shall be the same as for the original license.

(5) *Refresher course:* Applicant must submit to the department proof of successful completion of a refresher course as set forth in Subsection C of 16.43.2.17 NMAC of these rules.

E. Late fee:

(1) Unless the application for renewal is filed on or before the expiration date of the license, a late fee shall be payable by the applicant to the department.

(2) If a license is renewed within six (6) months after its expiration, a late fee in accordance with Subsection E of 16.43.2.24 NMAC of these rules shall be paid. The applicant for renewal must comply with all renewal requirements and must pay the late fee in addition to the renewal fee.

F. Reinstatement fee:

(1) A license that is not renewed on or before its expiration date or during the six (6) month period set out in Paragraph (2) of Subsection E of 16.43.2.24 NMAC of these rules may be reinstated if a renewal application is filed no more than one (1) year after the expiration date of the license.

(2) In order to reinstate a license, the applicant must comply with all renewal requirements, submit a renewal application and pay renewal and late fees as well as a reinstatement fee as set out in Subsection E of 16.43.2.24 NMAC of these rules.

G. Non-renewal of license:

(1) If a license is not renewed before or during the reinstatement period and a person wishes to work as a hoisting operator, he must apply for a new license and meet all initial licensing requirements.

(2) If a licensee works as a hoisting operator at any time during which his license is expired, he shall be deemed to be working as an unlicensed hoisting operator and shall be subject to penalties set out in Subsection C of Section 60-15-8 NMSA 1978 of the act.

[16.43.2.17 NMAC - Rp, 16 NMAC 43.2.8.11, 07/30/06]

16.43.2.18 PARENTAL RESPONSIBILITY ACT COMPLIANCE:

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

B. Disciplinary action: If an applicant or licensee is not in compliance with a judgment and order for child support, the department:

- (1) shall deny an application for a license;
- (2) shall deny the renewal of a license; and
- (3) has grounds for suspension or revocation of license.

C. Initial action: Upon receipt from the New Mexico human services department of a certified list of persons not in compliance with a judgment and order for child support, the council shall match the certified list against licensees and applicants. Upon determination that an applicant or licensee appears on the certified list, the council shall:

(1) recommend that the department take the appropriate action under Subsection B of 16.43.2.18 NMAC of these rules; or

(2) for current licensees only, informally notify the licensee that his name is on the certified list and require that the licensee provide the council with a statement of compliance from the human services department by the earlier of the license renewal date or a specified date not to exceed sixty (60) days; if the licensee fails to provide such statement, the council shall recommend to the department that a formal proceeding be commenced in accordance with Subsection B of 16.43.2.18 NMAC of these rules.

D. Evidence and proof: In any hearing under this section, a statement of non-compliance is conclusive evidence that requires the council to recommend the appropriate action under Subsection B of 16.43.2.18 NMAC of these rules, unless the applicant or licensee provides the council with a subsequent statement of compliance, which shall preclude the department from taking any action under this section.

E. Order: When a disciplinary action is taken under this section solely because the applicant or licensee is not in compliance with a judgment and order for child support, the order shall state that the application or license shall be reinstated upon presentation of a subsequent statement of compliance.

F. Procedures: Proceedings under this section shall be governed by the Uniform Licensing Act (61-1-1 to 61-1-31 NMSA 1978).

[16.43.2.18 NMAC - Rp, 16 NMAC 43.2.8.12, 07/30/06]

16.43.2.19 PENALTIES:

A. *Negligent or reckless operation of hoisting equipment:* In accordance with Section 60-15-11 NMSA 1978 of the act, the department may reprimand or fine a licensee, or place an operator on probation without any penalties, or suspend or revoke the license of a licensee, pursuant to the findings of a hearing of the council, for negligent or reckless operation of hoisting equipment.

B. *Working after expiration of license:* In accordance with Subsection C of Section 60-15-8 NMSA 1978 of the act, a person who is employed as a hoisting operator in any classification after his license has expired is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than three hundred dollars (\$300) or by imprisonment for not more than six (6) months or both.

C. *Unlicensed hoisting operator:* In accordance with Subsection A of Section 60-15-13 NMSA 1978 of the act, a person who operates a crane without a hoisting operator's license is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than three hundred dollars (\$300) or by imprisonment for not more than six (6) months or both. When a crane operator is found in violation of the rules and regulations adopted by the department or for any violation of the provisions of the act or its rules, the inspector or investigator designated by the department shall cite the violation; issue a written order for the cessation of the operation of the crane; contact the operator's supervisor and inform him/her of the cessation of the operation of the crane; and inform the operator that he/she has 10 (ten) days from the date of receipt of the violation in which to contact the department for a stipulated agreement and that failure to contact the department within those ten (10) days will automatically constitute a criminal charge against the operator with no further notice to the operator. After the operator has contacted the department, a stipulated agreement form shall then be mailed to the operator at the address provided to the department and shall afford the operator the following two options:

(1) to acknowledge his/her guilt of the offense charged, remit an administrative fee to the department, agree to obtain proper licensure prior to operating a crane and show evidence that the operator is moving toward compliance with the act within 30 days of the receipt of the violation; the administrative fee for a stipulated agreement shall be \$100 for the first 30 days; \$200 after the first 30 days and before 60 days; \$300 after 60 days and before 90 days, and after 90 days, an automatic criminal charge will be filed against the operator with no further notice to the operator, or

(2) pay an administrative fee of \$300 and agree to not operate hoisting equipment in New Mexico as defined in the act and understand that he/she will not be eligible to apply for such license for one (1) year from the date of the stipulated agreement, and that a second violation of the act will constitute an automatic criminal charge against him/her with no further notice; if the fee is not received by the department after 60 days from receipt of the citation, an automatic criminal charge will be filed against the operator with no further notice to the operator.

D. *Employer's liability:* In accordance with Subsection B of Section 60-15-13 NMSA 1978 of the act, an employer or his representative who knowingly, willingly or intentionally allows a person not licensed under the act to operate hoisting equipment is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500) or imprisonment for not more than six (6) months or both.

E. *Violation of provisions of act:*

(1) In accordance with Subsection E of Section 60-15-13 NMSA 1978 of the act, the department may assess an administrative penalty not to exceed one thousand dollars (\$1,000) for any violation of the act, in addition to or instead of revocation or suspension of license.

(2) In accordance with Subsection C of Section 60-15-13 NMSA 1978 of the act, any licensed hoisting operator who violates any provision of the act may be assessed a civil penalty not to exceed one thousand dollars (\$1,000) for each day on which a violation occurs.

F. *Violation of rules:* In accordance with Section 60-15-11 NMSA 1978 of the act, the department may reprimand or fine a licensee, or suspend or revoke the license of a licensee, for violation of these rules.

G. *Payment of expenses, attorney fees and court costs:* In accordance with Subsection D of Section 60-15-13 NMSA 1978 of the act, the department may bring an action in a court of competent jurisdiction to enjoin any person from violating any provisions of the act. If the court finds that a violation has occurred, the violator shall be liable for the expenses incurred by the department in investigating and enforcing the provisions of the act plus reasonable attorneys' fees and costs associated with the court action.

H. *Non-compliance with Parental Responsibility Act:* The department and/or council may take the actions set out in 16.43.2.18 NMAC of these rules or any action authorized by 40-5A-1 et seq. NMSA 1978.

[16.43.2.19 NMAC - Rp, 16 NMAC 43.2.8.13, 07/30/06]

16.43.2.20 REPORT OF INCIDENT:

- A.** Any in-house exemption holder or licensee involved in any incident that involves personal injury requiring a hospital stay of 72 (seventy-two) hours or more or damage to property of \$1000 or more, shall submit a complete report to the department in forms prescribed by the council within ninety-six (96) hours of the incident.
- B.** Failure to report any incident shall result in a penalty pursuant to Section 16.43.2.20 of this act.
- C.** Upon receipt of a report regarding an incident that may have involved a crane operator or hoisting operator, the department, council or /its designee shall gather information on the incident and/or 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 his/her findings.
- D.** *Review by council:* The council shall review the incident investigation findings and make its recommendation to the department.

[16.43.2.20 NMAC - Rp, 16 NMAC 43.2.8.14, 07/30/06]

16.43.2.21 INSPECTION/INVESTIGATION:

- A.** *Inspection services:* The department may contract for inspection services or may enter into agreement(s) with any private or state agency to provide inspection services regarding licenses of hoisting operators.
- B.** *Investigation services:* The department may contract for investigation services or may enter into agreement(s) with any private or state agency to provide investigation services in order to determine the cause(s) of any accident involving a hoisting operator and/or hoisting equipment, to cite unlicensed hoisting operators, to cite licensed hoisting operators operating beyond the scope of their license and/or endorsement, and to cite employers in accordance with Subsection B of Section 60-15-13 NMSA 1978 of the act.

[16.43.2.21 NMAC - Rp, 16 NMAC 43.2.8.15, 07/30/06]

16.43.2.22 COMPLAINTS AND APPEALS:

- A.** *Uniform Licensing Act:* Complaints and appeals shall be processed in accordance with the Uniform Licensing Act (61-1-1 to 61-1-31 NMSA 1978).
- B.** *Complaint:* The department or council, on its own motion or upon receipt of a sworn complaint in writing of a licensee's negligent or reckless operation of hoisting equipment, violation of these rules, or any violation of the provisions of the act, shall notify the licensee, in writing, of the charges made and shall afford the licensee an opportunity to be heard in person.
- C.** *Hearing by council:* The department or council shall fix a time and place of hearing and shall cause a notice of hearing to be served on the licensee by personal delivery or by certified mail to the licensee's last address of record with the department. At the time and place fixed in the notice, the council shall proceed to the hearing of the charges; both the licensee and the complainant shall be accorded ample opportunity to present such statements, testimony, evidence and/or argument as may be pertinent to the charges or to any defense thereto. After such hearing, the council shall submit its findings and recommendation to the department.
- D.** *Action by department:* Following the hearing set out in Subsection C of 16.43.2.22 NMAC of these rules, the superintendent may reprimand or fine a licensee, and/or suspend or revoke the license of a licensee, if the licensee is determined to be guilty of the negligent or reckless operation of hoisting equipment, violation of these rules, or violation of any provisions of the act.

E. *Revocation or suspension of License:*

- (1)** Prior to revocation, suspension or denial of a license for a violation of any provisions of the act, the licensee shall be provided a hearing in accordance with the ULA.
 - (a)** A disciplinary action against a licensee is initiated by filing a complaint with the council.
 - (b)** The licensee shall be notified of the complaint within thirty (30) days of filing. The licensee shall then have thirty (30) days to respond to the allegation(s) of the complaint or the licensee may notify the council in writing that the licensee has corrected the violation(s) alleged in the complaint.
 - (c)** If the licensee does not respond to the allegation(s) of the complaint or corrects the alleged violation(s), the council may issue an NCA in accordance with the ULA.
 - (d)** A request for hearing shall be provided in accordance with the ULA.
- (2)** After revocation of license, the former licensee shall not be eligible to apply for a hoisting operator's license in any classification for a period of one (1) year.
- (3)** Upon suspension or revocation of license, or as soon thereafter as practicable, the licensee shall surrender possession of his license to the department. The license shall be placed in the licensee's file.

(4) Prior to the issuance or re-issuance of a license to any person whose license was revoked or suspended, the person must furnish proof to the department of the successful completion of an industry-recognized and council-approved refresher course for hoisting operators.

F. *Appeal from decision of superintendent:* A decision of the superintendent may be appealed by filing a petition for review with the district court.

[16.43.2.22 NMAC - Rp, 16 NMAC 43.2.8.16, 07/30/06]

16.43.2.23 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 of the act.

B. *Membership of council:* The council shall consist of no less than five (5) members appointed by the superintendent with consideration being given to geographic representation:

(1) one member shall be a class I hoisting operator; and

(2) one member shall be a contractor (as defined in Section 60-13-3 NMSA 1978) who employs one or more hoisting operators; and

(3) one member shall be a representative of organized labor; and

(4) the other members shall be public members who are not licensed hoisting operators.

C. *Terms of service:* Council members serve at the pleasure of the superintendent.

D. *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, nor serve for a period of more than three (3) years. 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.

E. *Quorum:* A quorum of the council shall be more than one-half (1/2) of the total membership of the council. A quorum is necessary to conduct official business. A vacancy in the membership of the council shall not impair the right of a quorum to exercise all the rights and perform all the duties of the council.

F. *Telephone conferences:* 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.

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

H. *Meetings:* The council shall meet quarterly. A meeting shall be convened at the request of the department, the 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 10-15-4 NMSA 1978).

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

J. *Duties:* Duties of the council shall include:

(1) reviewing, evaluating, and approving the applications, qualifications and examinations of applicants for licensure, and recommending to the superintendent whether licensure should be granted;

(2) holding hearings in accordance with the requirements of the Uniform Licensing Act (61-1-1 to 61-1-31 NMSA 1978) and reporting its findings and recommendations to the superintendent;

(3) examining proposed in-house training courses and refresher courses to determine whether they meet the requirements of the act and these rules, and publishing and updating lists of approved courses and refresher courses;

(4) reviewing incident investigation findings and making recommendations to the department;

(5) proceeding according to these rules adopted by the department;

(6) making recommendations to the department concerning any aspect of licensing under the act or these rules.

[16.43.2.23 NMAC - Rp, 16 NMAC 43.2.8.17, 07/30/06]

16.43.2.24 FEES:

A. *Fee Payments:*

- (1) All checks to the department from applicants and licensees shall be made payable to hoisting program.
- (2) All payments shall be due at the department's office.
- (3) All fees and payments shall be non-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 \$50.00. The application fee 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 license fee of \$75.00 for two years.
- (2) An applicant accepted for licensure as a class II hoisting operator shall pay an initial license fee of \$75.00 for two years.
- (3) An applicant accepted for licensure as a class III hoisting operator shall pay an initial license fee of \$25 for two years.
- D.** *Renewal license fee:*
- (1) The fee for renewal of a license as a class I hoisting operator is \$75.00. 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 license as a class II hoisting operator is \$75.00. 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 license as a class III hoisting operator is \$25.00. The renewed license shall be valid for two (2) years from the expiration date of the previous license.
- E.** *Late fee:*
- (1) Unless a renewal application is filed on or before the expiration date of the license, a late fee shall be payable.
- (2) If a license is renewed within six (6) months after its expiration, a late fee of \$5.00 shall be paid for each month or portion thereof that the renewal application is past-due.
- F.** *Reinstatement fee:* A license that is not renewed on or before its expiration date or during the six (6) month period set out in 16.43.2.25.E of these rules may be reinstated if a renewal application is submitted no more than one (1) year after the expiration date of the license. The reinstatement fee is \$100.00 and is in addition to renewal and late fees.
- 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 exceed \$50.00.
- 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 exceed \$25.00.
- 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 because of a name change or for any other reason, shall be \$10.00.
- K.** *In-House Training fee:*
- (1) Any person or organization offering in-house training and wishing approval of its course shall submit a \$300 application fee.
- (2) Upon approval, a person or organization shall submit a certification fee of \$400.
- (3) Any person or organization wishing to renew its certification shall submit a \$300 renewal fee.
- (4) Any employer offering in-house training and wishing approval of its course shall submit a \$150 application fee.
- (5) Upon approval, the employer shall submit a certification fee of \$300.
- (6) Any employer wishing to renew its in-house training certification shall submit a \$200 renewal fee.
- L.** *Returned check fee:* The fee for any check that fails to clear the bank or is returned unpaid by the bank for any reason shall be \$35.00. A returned check shall cause any license issued or to be issued or any examination scheduled or to be scheduled to be immediately suspended until proper payment in full is received by the department, including a "returned check" fee as set out in this subsection.
- M.** *Administrative fees:*
- (1) The fee for photocopies of documents shall be sixty five (65) cents per page.

(2) The fee for certified copies of documents shall be seventy five (75) cents per page.

N. *Miscellaneous fees:* The fee for any service or item not mentioned above shall be set at a reasonable amount by the department.

[16.43.2.24 NMAC - Rp, 16 NMAC 43.2.8.18, 07/30/06]

HISTORY OF 16.43.2 NMAC:

Pre NMAC History: None.

History of Repealed Material:

16 NMAC 43.2, "Hoisting Operators Safety" (filed January 2, 1997) is hereby repealed 07/30/06.

NMAC History: 16 NMAC 43.2.2, Hoisting Operators Safety (filed 1-02-1997), effective 1-15-1997.

16 NMAC 43.2, Hoisting Operators Safety (filed 1-02-1997) was renumbered, reformatted, amended, and replaced by 16.43.2 NMAC, Hoisting Operators Safety; Hoisting Operators Code, effective 07/30/06.