

TITLE 14 HOUSING AND CONSTRUCTION
CHAPTER 5 CONSTRUCTION INDUSTRIES GENERAL PROVISIONS
PART 1 GENERAL PROVISIONS

14.5.1.1 ISSUING AGENCY: Construction Industries Division of the Regulation and Licensing Department.
[14.5.1.1 NMAC - Rp, 14.1.11 NMAC, 7-1-04]

14.5.1.2 SCOPE: This rule applies to all contracting work performed in New Mexico on or after **January 1, 20[08] 11**, that is subject to the jurisdiction of CID, unless performed pursuant to a permit for which an application was received by CID before that date.
[14.5.1.2 NMAC - Rp, 14.1.1.2 NMAC, 7-1-04; A, 1-1-08; NMAC 1-1-11]

14.5.1.3 STATUTORY AUTHORITY: NMSA 1978 Section 60-13-9.
[14.5.1.3 NMAC - Rp, 14.1.1.3 NMAC, 7-1-04]

14.5.1.4 DURATION: Permanent.
[14.5.1.4 NMAC - Rp, 14.1.1.4 NMAC, 7-1-04]

14.5.1.5 EFFECTIVE DATE: **July 1, 20[04] 11**, unless a later date is cited at the end of a section.
[14.5.1.5 NMAC - Rp, 14.1.1.5 NMAC, 1-1-11]

14.5.1.6 OBJECTIVE: The purpose of this rule is to set forth general provisions governing contracting work in New Mexico.
[14.5.1.6 NMAC - Rp, 14.1.1.6 NMAC, 7-1-04]

14.5.1.7 DEFINITIONS: The definitions in this section are used throughout the CID rules contained in Chapters 5 through 10 of Title 14.

A. Building/Code official means the bureau chief of each trade bureau of the division means the officer or other designated authority charged with the administration and enforcement of this code, or a duly authorized representative.

B. CID and division mean the construction industries division of the regulation and licensing department.

C. CID rules means the rules compiled in Title 14, Chapters 5 through 10 of the New Mexico administrative code.

D. CILA means the Construction Industries Licensing Act, NMSA 1978 Section 60-13-1 et seq.

E. Commission means the construction industries commission.

F. Commissioning means adjusting, balancing, documenting, and certifying the completion of an HVAC system

[F] G. Contracting has the meaning given in NMSA 1978 Section 60-13-3.

[G] H. Director has the meaning given it in NMSA 1978 Section 60-13-2.

[H] I. IBC means the **[2006] 2009** international building code.

[I] J. IFC means the **[2006] 2009** international fire code.

[J] K. IRC means the **[2006] 2009** international residential code.

[K] L. LPG Standards means 19.15.40 NMSA, Liquefied Petroleum Gas Standards, and NMSA 1978 70-5-1 et seq., Liquefied and Compressed Gasses, collectively.

[L] M. New Mexico construction code(s) means any of the rules compiled in Title 14, Chapters 7 through 10 of the New Mexico administrative code.

[M] N. NMBSS means 14.7.5 NMAC, **[2006] 2009** New Mexico Non-Load Bearing Baled Straw Construction Building Standards.

[N] O. NMCBC means 14.7.2 NMAC, **[2006] 2009** New Mexico Commercial Building Code, which adopts by reference and amends the 2006 international building code.

[O] P. NMEBC means 14.7.7 NMAC, **[2006] 2009** New Mexico Existing Building Code, which adopts by reference and amends the 2006 international existing building code.

[P] Q. NMEBMC means 14.7.4 NMAC, **[2006] 2009** New Mexico Earthen Building Materials Code.

[Q] R. NMEC means 14.10.4 NMAC, 2008 New Mexico Electrical Code, which adopts by reference and amends the ~~2005~~ 2008 national electrical code.

[R] S. NMECC means 14.7.6 NMAC, ~~2006~~ 2009 New Mexico Energy Conservation Code, which adopts by reference and amends the ~~2006~~ 2009 international energy conservation code.

[S] T. NMESC means 14.10.5 NMAC, 2007 New Mexico Electrical Safety Code, which adopts by reference and amends the 2007 national electrical safety code.

[F] U. NMMC means 14.9.2 NMAC, ~~2006~~ 2009 New Mexico Mechanical Code, which adopts by reference and amends the ~~2006~~ 2009 uniform mechanical code.

[U] V. NMPC means 14.8.2 NMAC, ~~2006~~ 2009 New Mexico Plumbing Code, which adopts by reference and amends the ~~2006~~ 2009 uniform plumbing code.

[V] W. NMRBC means 14.7.3 NMAC, ~~2006~~ 2009 New Mexico Residential Building Code, which adopts by reference and amends the ~~2006~~ 2009 international residential code.

[W] X. NMSEC means 14.9.6 NMAC, 2006 New Mexico Solar Energy Code, which adopts by reference and amends the 2006 uniform solar energy code.

[X] Y. NMSPC means 14.8.3 NMAC, 2006 New Mexico Swimming Pool, Spa, and Hot Tub Code, which adopts by reference and amends the 2006 uniform swimming pool, spa, and hot tub code.

[Y] Z. **Published code** means any code or standard published by an entity other than the state of New Mexico and adopted by reference, or referred to as a standard in the CID rules.

[Z] AA. ULA means NMSA 1978 Section 61-1-1 et seq., the Uniform Licensing Act.
[14.5.1.7 NMAC - Rp, 14.1.1.7 NMAC, 7-1-04; A, 1-1-08, A, 10-24-08; NMAC 1-1-11]

14.5.1.8 RESPONSIBILITY FOR COMPLIANCE:

A. Every person who performs work in connection with the installation or repair of any building, structural, electrical, gas, mechanical or plumbing system regulated by the CID rules is responsible for complying with the CID rules.

B. When a violation of a New Mexico construction code is alleged, a building official shall investigate the allegation to obtain sufficient evidence or proof to determine whether a violation has occurred. The building official may require tests, at no cost to CID, to determine compliance. Such tests shall be conducted in conformance with nationally recognized testing standards, or if no standards have been established, in conformance with such specifications as the building official shall approve. Such reports and tests shall include those published or conducted by reliable and reputable sources approved by the building official, in accordance with CILA.
[14.5.1.8 NMAC - Rp, 14.7.2.10 NMAC, 14 NMAC 9.2.I.100 & 14 NMAC 9.2.II.100, 1-1-08; NMAC, 7-1-04]

14.5.1.9 CONFLICTS:

A. Between current New Mexico construction codes. When the provisions of one New Mexico construction code specifies different materials, methods, construction, or other requirements than the provisions of other New Mexico construction codes, the general rule of interpretation to be applied is that the most restrictive provision shall apply, and the most specific provision shall govern more general provisions. If it is determined by the building officials responsible for enforcing the codes that the conflict between the provisions should be resolved by a different interpretation, the building officials' determinations shall control.

B. With prior New Mexico construction codes. The New Mexico construction codes shall not apply to require a change in any structure existing at the time such code(s) become effective provided that the structure was constructed and has been maintained in compliance with the laws and CID rules in effect at the time the existing structure was constructed or maintained; provided that, if all or any part of the structure is determined to be unsafe, 14.5.1.12 NMAC will govern.

C. Between current New Mexico construction codes and Codes Adopted by Other State Agencies. The occupancy classification of a building shall be established by the Building Official having jurisdiction. When there is a conflict in interpretation of the application of the codes, including pursuant to Section 59A-52-15 NMSA, the interpretation of the Building Official shall prevail.

[CID]. With requirements of other agencies. When a regulatory agency other than CID may or might have jurisdiction over certain aspects of a project, a person working on the project must cooperate with any such agency to ensure compliance with all applicable requirements of that agency. Such aspects may include, but are not limited to, compliance with fire code standards enforced by the state fire marshal, or any local fire code enforcement agency; or any other applicable code or standard enforced by the state environment department; the state health department, state human services department; the public regulation commission; the governor's committee on the concerns of the handicapped; and local zoning and historical authorities. From time to time, CID may, as permitted

by law, enter into agreements with other regulatory agencies pursuant to which the other agency's requirements are made a prerequisite to a CID action. In such cases, satisfaction of such a prerequisite will not constitute full compliance with the other agency's requirements.

[D] E. With other laws. The CID rules shall not be deemed to contravene or invalidate any other valid federal, state or local law.

[E] F. With referenced and incorporated codes and standards. The provisions of any published code or standard referenced in the CID rules shall be deemed to be incorporated into and made part of the CID rules, to the extent that such reference requires, and with all such modifications and amendments as may be made to the provision. If the reference results in a conflict between the provision of the published code or standard and the CID rules, the CID rules shall govern.

[14.5.1.9 NMAC - Rp, 14.7.2.8 NMAC, 14 NMAC.9.2.8, 14NMAC.9.2. I.100, 14 NMAC 9.2.II.100 & 14.10.4.10 NMAC 7-1-04, A, 10-24-08 NMAC, 1-1-11]

14.5.1.10 BUILDING OFFICIALS:

A. Powers and duties. Each building official is authorized to render interpretations of the New Mexico construction code that the official is responsible for enforcing and to establish procedures for the interpretation and application of that code. In making such interpretations and procedures, the building official may rely on such expert opinion as may be prudent or necessary, subject to budgetary constraints and other applicable administrative matters as determined by the director. The interpretations and procedures established by a building official pursuant to the CID rules shall be consistent with the intent of the New Mexico construction code to which they apply, and shall not nullify or otherwise negate such intent or be in conflict with any express provision of such code.

B. Notices. The building official shall timely issue, or cause to be issued, all notices required by CILA, the CID rules and the ULA, in order to ensure compliance with the New Mexico construction codes and any other laws applicable to contracting in the state of New Mexico.

[14.5.1.10 NMAC - Rp, 14.7.2.10 NMAC, 14 NMAC 9.2.I 100, 14 NMAC 9.2.II 100 & 14.10.4.9 NMAC, 7-1-04]

14.5.1.11 ALTERNATIVE MATERIALS, METHODS, AND ASSEMBLIES OF CONSTRUCTION:

None of the New Mexico construction codes shall be interpreted to prevent the use of any material, method, or assembly of construction not specifically prescribed by the codes. A building official is authorized to permit a variance or approve an alternative as provided in this section.

A. Variances. If the circumstances of a particular construction project make strict compliance with a provision of an applicable code or standard impossible or impracticable, the building official responsible for enforcing that code or standard has the authority to approve a variance to the provision; provided, however, that any such variance must be consistent with the intent of the code, and shall not nullify or otherwise negate such intent, nor shall such variance adversely affect health, life-safety, accessibility, fire resistance or structural requirements otherwise applicable in the circumstances. No variance shall be valid or have force or effect unless in writing and signed by the appropriate building official.

B. Alternatives. A building official is authorized to, in accordance with the New Mexico construction code for which the official is responsible, approve materials, designs and methods or assemblies of construction that are not expressly specified in that code if the alternative complies with the intent of that code; provided, however, that the alternative is equivalent in quality, strength, effectiveness, fire resistance, durability and safety as the required code provision. See specific New Mexico construction codes for additional information.

C. Supporting data. A building official is authorized to require sufficient evidence or proof in determining whether a variance or alternative is permissible. The building official is authorized to require tests, at no cost to CID, to determine whether the proposed variance or alternative is in compliance with the intent of the code. Such tests shall be conducted in conformance with nationally recognized testing standards, or if no standards have been established, in conformance with such specifications as the building official shall approve. Such reports and tests shall include those published or conducted by reliable and reputable sources approved by the building official, in accordance with CILA.

[14.5.1.11 NMAC - Rp, 14.5.4.8 NMAC, 14.7.2.9 NMAC, 14 NMAC 9.2.I 100 & 14 NMAC 9.2.II 100, 7-1-04]

14.5.1.12 UNSAFE STRUCTURES.

A. Whenever the building official or inspector discovers a condition in a structure that constitutes an unsafe condition, the building official, or the designee of the building official, shall take the following action:

(1) if the unsafe condition results from construction in progress, issue a correction notice and/or stop work order as is necessary to abate the unsafe condition;

(2) if the unsafe condition is in an existing building, prepare a report identifying the location of the structure and the unsafe condition observed. The report shall be provided to the local authority having jurisdiction of the structure and to the owner, agent or person in control or possession of the structure when the identity of owner, agent or person can be readily determined; or

(3) if the unsafe condition relates to any utility service the building official or inspector shall proceed in accordance with Subsections A through D of NMAC 1978 Section 60-13-42; any service disconnected pursuant to this rule shall not be reconnected without the prior written approval of the building official or inspector.

B. For purposes of this section, an unsafe condition is any condition that constitutes a violation the CID rules and poses an actual threat to the health, safety or welfare of persons or property.
[14.5.1.12 NMAC - Rp, 14.7.2.10 NMAC, 14 NMAC 9.2.I 100, 14 NMAC 9.2.II 100 & 14.10.4.8 NMAC, 7-1-04]

14.5.1.13 TECHNICAL ADVISORY COUNCILS, HEARINGS, APPEALS:

A. Technical advisory council.

(1) The commission may appoint technical advisory councils to assist the bureaus and/or division in an advisory manner on material and code approvals and technical aspects of the particular industry involved.

(2) These councils will meet at the call of the applicable bureau chief or the council chairman. Recommendations of the councils will be presented to the commission. The technical advisory council will provide a forum of input from the industry in their specific area of expertise.

(3) The technical advisory councils may review revenues, budgets and permits and inspect performance in order to make semi-annual recommendations as to permit fee modifier adjustments.

B. Hearing officer.

(1) The appointment of a hearing officer by the director shall be deemed the action of the commission.

(2) The hearing officer shall have authority to issue subpoenas.

C. Appeals.

(1) Any person may register an appeal with the division director for the review of any decision of any bureau, its employees or agents, provided such appeal is made in writing within twenty (20) days after notice of such decision has been received by the complainant. Upon receipt of such appeal, the director shall determine if the action covered by the complaint is in conformity with the provisions of the order, rules and regulations of the division. Within twenty (20) days after receipt of the appeal, the director shall render his decision in writing in accordance with his findings.

(2) Any person aggrieved by the decision of the director may appeal to the commission in writing within twenty (20) days from receipt of the director's decision. The commission shall render its decision in writing within twenty (20) days after its next regular meeting after said appeal has been filed.

(3) Appeals from the decision of the commission shall be made in writing to the district court of the county of the residence of the aggrieved party within twenty (20) days after the decision of the commission has been delivered to the complainant, as provided in NMSA 1978 Section 61-1-17.

[14.5.1.13 NMAC - Rp, 14.5.7.8 NMAC, 7-1-04]

History of 14.5.1 NMAC:

Pre-NMAC History:

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as:

CIC 70-2, General Construction Classifications, filed 11-25-70;

CIC 72-4, General Construction Classifications, filed 02-16-72;

CIC 76-2, Rules And Regulations, filed 05-05-76;

CID 78-2, Rules And Regulations, filed 12-05-78;

CID 79-1, Rules And Regulations, filed 06-06-79;

CID 82-1, Construction Industries Rules And Regulations, filed 04-14-82;

CID 85-1, Construction Industries Rules And Regulations, filed 02-04-85;

CID 90-1, Construction Industries Rules And Regulations, filed 05-31-90.

History of Repealed Material:

14 NMAC 5.1.1, Housing and Construction - Construction Industries General Provisions - Open Meetings Act (filed 92/97), repealed 12-1-00.

14.5.1 NMAC, Construction Industries General Provisions - Open Meetings Act (filed 10-16-00) repealed 1-1-11.

Other History:

That portion of CID 90-1, Construction Industries Rules And Regulations, filed 05-31-90 -- renumbered, reformatted and amended to 14 NMAC 5.1.1, Construction Industries General Provisions - Open Meetings Act, effective 09-14-96.

14 NMAC 5.1.1, Construction Industries General Provisions - Open Meetings Act (filed 09-03-96) amended and replaced by 14 NMAC 5.1.1, Construction Industries General Provisions - Open Meetings Act effective 09-23-97.

14 NMAC 5.1.1, Housing and Construction - Construction Industries General Provisions - Open Meetings Act (filed 09-02-97) replaced by 14.5.1 NMAC, Housing and Construction - Construction Industries General Provisions - Open Meetings Act, effective 12-1-00.

14.5.1 NMAC, Construction Industries General Provisions - Open Meetings Act (filed 10-16-00);

that portion of 14.1.1 NMAC, Housing General Provisions - General Provisions (filed 10-16-00);

that portion of 14.5.4 NMAC, Construction Industries General Provisions - Alternative Materials, Methods and Assemblies of Construction (filed 10-16-00);

that portion of 14.5.7 NMAC, Construction Industries General Provisions - Technical Advisory Councils, Hearings, Appeals, Severability (filed 10-16-00);

that portion of 14.7.2 NMAC, 1997 New Mexico Building Code (filed 10-16-00);

that portion of 14 NMAC 9.2, 1997 New Mexico Plumbing and Mechanical Code (filed 10-30-98);

that portion of 14.10.4 NMAC, State of New Mexico Electrical Code (filed 07-01-02) has been replaced by 14.5.1 NMAC, Construction Industries General Provisions - General Provisions, effective 1-1-11.