

TITLE 14 HOUSING AND CONSTRUCTION
CHAPTER 6 CONSTRUCTION INDUSTRIES LICENSING
PART 3 CONTRACTOR'S LICENSE REQUIREMENTS

Draft 9/17/05

14.6.3.1 ISSUING AGENCY: The Construction Industries Division (CID) of the Regulation and Licensing Department.

[14.6.3.1 NMAC - Rp, 14 NMAC 6.3.1, 12-1-00]

14.6.3.2 SCOPE: This rule applies to individuals seeking to obtain a license or certificate issued by CID.

[14.6.3.2 NMAC - Rp, 14 NMAC 6.3.2, 12-1-00]

14.6.3.3 STATUTORY AUTHORITY: NMSA 1978, Sections 60-13-14.9 and 40-5A-1 through 9.

[14.6.3.3 NMAC - Rp, 14 NMAC 6.3.3, 12-1-00]

14.6.3.4 DURATION: Permanent.

[14.6.3.4 NMAC - Rp, 14 NMAC 6.3.4, 12-1-00]

14.6.3.5 EFFECTIVE DATE: February 1, 2006, unless a later date is cited at the end of a section.

[14.6.3.5 NMAC - Rp, 14 NMAC 6.3.5, 12-1-00]

14.6.3.6 OBJECTIVE: The objective of 14.6.3 NMAC is to set forth general provisions governing contractor licensing in New Mexico.

[14.6.3.6 NMAC - Rp, 14 NMAC 6.3.6, 12-1-00]

14.6.3.7 DEFINITIONS: [See NMSA 1978, section 60-13-3.]

[14.6.3.7 NMAC - Rp, 14 NMAC 6.3.7, 12-1-00]

14.6.3.8 LICENSE AND QUALIFYING PARTY REQUIREMENTS.

A. General information.

(1) Any person engaged in contracting in the State of New Mexico must be validly licensed pursuant to the Construction Industries Licensing Act (Act), NMSA 1978, section 60-13-1 et. seq., and the New Mexico Administrative Code, Title 14.

(2) No business entity, the majority of which is owned by an individual who is seventeen (17) years of age or younger, is eligible for licensure.

(3) Contractor licenses issued by CID:

(a) are issued only to qualified business entities which employ or are owned by one or more qualifying parties validly certified by CID to perform the classification of contracting in which the licensee intends to engage;

(b) grant only the authority to engage in contracting in the classification specified on the license issued to the entity, and on the certificate issued to its qualifying party;

(c) are not transferable and may not be used by any person other than the entity to which it is issued, and any entity that permits another person to use its license, or knows that its license is being used by another person and fails to promptly notify CID of such use, shall be subject to disciplinary action, up to and including revocation of the license; and

(d) authorize only the entity as named on the license to engage in contracting and no licensee may engage in contracting using a name other than the name that is shown on the license issued to it.

(4) No license shall be issued to an entity that is using a name containing word(s) identifying a construction or contracting trade, craft, discipline or expertise that is not covered by the classification of license for which the entity is qualified.

(5) In the event a licensee loses its qualifying party, through termination of employment or otherwise, both the licensee and the qualifying party must notify CID or its designee in writing of the separation within thirty (30) days thereof.

(6) CID shall address all written communication with a licensee to its address of record which is the address shown on the application or any different address of which CID has received written notice from the licensee. A licensee shall report in writing to CID or its designee any change of address within thirty (30) days after such change. Failure to do so is cause for disciplinary action.

(7) For additional information regarding journeyman certification, please see 14.6.4, NMAC.

B. Types of entities.

(1) Corporations, limited liability companies (LLC) and limited liability partnerships (LLP).

(a) Corporations, LLCs and LLPs are each required to be licensed even though one or more stockholders, members or partners have a license or qualifying party certificate.

(b) Corporations, LLCs and LLPs must be legally authorized to do business in New Mexico in order to be eligible to apply for, renew or retain a license.

(c) Any license issued to a corporation, LLC or LLP shall automatically cancel when the entity ceases to exist under New Mexico law.

(2) Joint ventures.

(a) No two or more persons shall submit a joint bid or jointly engage in contracting unless operating as a validly licensed joint venture.

(b) To be eligible to apply for, renew or retain a license, each entity comprising the joint venture must hold a valid New Mexico contractor license and be legally authorized to do business in New Mexico.

(c) Any license issued to a joint venture entity shall automatically cancel when the entity ceases to exist under New Mexico law.

(3) Partnerships.

(a) A partnership must be legally authorized to do business in New Mexico in order to be eligible to apply for, renew or retain a license.

(b) Any license issued to a partnership shall automatically cancel when the partnership ceases to exist under New Mexico law.

(4) Sole proprietorships.

(a) A sole proprietorship must be legally authorized to do business in New Mexico in order to be eligible to apply for, renew or retain a license.

(b) On the death of a sole proprietor, the license shall automatically cancel.

C. Proof of financial responsibility.

(1) There is no limit on the number of projects a licensee may undertake as long as each project is within the value limits set by the licensee's proof of financial responsibility as determined under Section 60-13-49 of the Act.

(2) A licensee who bids or otherwise undertakes a project that has a value greater than the value established by the financial responsibility level of the license must increase the financial responsibility level before undertaking or continuing work on such a project. Violation of the financial responsibility limitations on a license is grounds for disciplinary action.

(3) Net worth shall be used to determine the level of responsibility limitation on a license when a financial statement is offered as proof of financial responsibility.

(4) The amount of the surety bond or cash collateral offered as proof of financial responsibility may be increased at any time. A surety bond may be decreased only at the time of license renewal and requires that a rider from the bonding company showing the decrease be submitted with the renewal application. A cash collateral may be decreased only at the time of license renewal by submitting a new assignment from the bank or financial institution with the renewal application. The previous cash collateral assignment shall not be released for a period of six (6) months after the date on which the new assignment becomes effective, or the cancellation of the license, whichever is earlier

(5) If a bond or cash collateral is cancelled, expires or becomes otherwise ineffective during the life of a valid license, the license will be automatically canceled thirty (30) days after the date CID receives notice of such ineffectiveness. Such a license may be reinstated upon proof of financial responsibility provided to CID or its designee before the license expires for failure to renew.

(6) Nothing in this rule or the Act shall require CID to reinstate or renew a license if the cause exists to suspend or revoke the license on other grounds.

D. Application.

(1) Every application for licensure, certification, and all requests for formal action to be taken on a license or certificate, such as renewal or addition of a classification, must be made on the

applicable form issued by CID or its designee and accompanied by the applicable fee as required by 14.5.5, NMAC.

(2) An incomplete or insufficient application shall be rejected and returned to the applicant, with a statement of the reason for the rejection.

(3) Examinations.

(a) No applicant for a qualifying party certificate is eligible to take a qualifying examination until documentation establishing satisfaction of the applicable work experience requirement has been received and approved by CID or its designee.

(b) Examinations shall be administered by CID, or its designee, according to a regular schedule, which shall be published.

(c) A passing exam score is 75% or above.

(d) An applicant who fails to appear for a scheduled exam or fails to attain a passing score of 75% may take another regularly scheduled exam, provided the applicant reapplies to take the exam, pays the fee and does not repeat the exam more than twice in any thirty (30) day period.

(4) All requirements for licensing or certification must be met within six (6) months from the date the application is received by CID or its designee. Any application not completed within the six (6) month period shall expire and any fees paid in connection with the expired application shall automatically forfeit.

(5) If CID or its designee determines that an applicant has cheated, the exam shall be deemed invalid, all fees shall be forfeited, and any license or certificate issued on the basis of that exam shall be automatically and immediately voided. The applicant will not be eligible to take any exam administered by CID, or its designee, for one (1) year after the date of such an event.

E. Qualifying party certificates.

(1) Qualifying party certificates issued by CID:

(a) are issued only to individuals who are eighteen (18) years of age or older;

(b) grant only the authority for the licensee to engage in contracting in the classification specified on the certificate.

(c) are not transferable and may not be used by any individual other than the individual to whom it is issued, and any individual who permits another person to use his certificate, or knows that his certificate is being used by another person and fails to promptly notify CID of such use, shall be subject to disciplinary action, up to and including revocation of the certificate.

(2) Any individual applying for a qualifying party certificate must provide proof of work experience, as required in the Act and Title 14, NMAC, in the classification of contracting for which application is made. Training that is classified as technical training by an accredited college, university, manufacturer's accredited training program, technical vocational institute or an accredited apprenticeship program will be considered in lieu of work experience. Each year of equivalent training shall be applied as one-half (1/2) year of experience, but in no case shall accredited training exceed one-half (1/2) of the total work experience requirement.

(3) While validly attached to, and qualifying a license, no qualifying party shall accept or engage in any employment that would conflict with his responsibilities as a qualifying party for, or conflict with his ability to adequately supervise the work performed by, the licensee.

(4) No individual may qualify more than one licensed entity, other than a joint venture, unless there is at least thirty percent (30%) common ownership among the qualified entities. CID may require evidence of such ownership that is satisfactory to the Director.

F. License renewals.

(1) CID or its designee shall mail to every licensee a renewal application form at least thirty (30) days prior to the expiration of the license to the current address of record for that licensee. Whether or not the application form is received, it is the sole duty and responsibility of each licensee to timely renew its license.

(2) The filing date of the renewal application shall be the date the envelope is postmarked or, if hand delivered, the date it is received by CID or its designee.

(3) The signatures of all current qualifying parties on each license must appear on the renewal form.

(4) If a renewal application is not timely received, or if received but is rejected for failure to comply with renewal requirements, the license shall be suspended and subject to cancellation pursuant to sections 60-13-18 E and F of the Act.

G. Change of name.

- (1) The licensee must submit a written request for a name change accompanied by:
 - (a) An amended registration certificate from the New Mexico Department of Taxation and Revenue.
 - (b) If bonded, a rider from the bonding company; or if covered by a cash collateral, a new assignment document from the issuing financial institution.
 - (c) If a corporation, LLC or LLP, a copy of the New Mexico certificate of amendment or other document issued by the state showing that the name change has been officially recorded.
- (2) A change of name is not effective until approved in writing by CID. Conducting business under the new name prior to CID's written approval may constitute a violation of section 30-13-23 K of the Act.

H. Validity of licenses and certificates.

- (1) The following events may cause a license or certificate to be, or to become, invalid:
 - (a) Failure to renew pursuant to Sections 60-13-18 and 60-13-39 of the Act.
 - (b) Failure to maintain proof of financial responsibility pursuant to Section 60-13-49 of the Act.
 - (c) Failure to comply with workers' compensation laws pursuant to Section 60-13-23 of the Act.
 - (d) Failure to comply with the Parental Responsibilities Act.
 - (e) Failure of a license to be qualified by a qualifying party certificate.
 - (f) Loss of authorization to do business in New Mexico.
 - (g) Death of a sole proprietor.
 - (f) Revocation or suspension of a license pursuant to Section 60-13-23 of the Act.
 - (g) Revocation or suspension of a certificate pursuant to Section 60-13-24 and 36 of the Act.

(2) When a license ceases to be qualified by a qualifying party certificate, the license will be automatically cancelled and the licensee may not bid or commence any new work in that classification. Any bid or new work commenced after a license is cancelled pursuant to this rule shall be considered unlicensed and will subject the licensee to disciplinary action. Work in progress at the time of the cancellation may continue for not more than one hundred twenty (120) days. After one hundred twenty (120) days, any permit that was issued to the licensee for work in the affected classification shall be automatically cancelled, no inspection shall be conducted pursuant to any such cancelled permit, and any work continued or undertaken shall be deemed to be unlicensed activity and will subject the licensee to prosecution pursuant to Section 60-13-52 of the Act.

(3) A qualifying party certificate that is not qualifying a valid license will automatically expire as follows:

(a) A new qualifying party certificate that does not qualify a valid license within twelve (12) months from the date on which the exam score was reported to CID, or its designee, shall automatically expire.

(b) A qualifying party who does not qualify a valid license for any consecutive two (2) - year period shall lose his eligibility as a qualifying party and his certificate shall automatically expire. Any individual who wishes to become recertified in the same classification after the expiration of his certificate pursuant to this rule must apply, retest, and pay all applicable fees. The director may waive the exam requirement for an additional twelve (12) months if the applicant submits documentation of work experience indicating technical and business knowledge equivalent to that indicated by exam scores.

(4) Any work in progress at the time a sole proprietor dies or an entity ceases to exist or be authorized to do business, as described in subpart B. of this rule, may continue for not longer than one hundred twenty (120) days provided that CID receives written notice of the death or event that causes the entity to lose its authorization to do business within thirty (30) calendar days thereafter. At the end of the one hundred twenty (120) days, all permits issued to the entity shall be cancelled, no inspections on such permits shall be performed, and any work performed thereafter by the entity shall be deemed unlicensed activity and may be prosecuted under section 60-13-52 of the Act. If the licensee, or the licensee's representative fails to notify CID as required in this rule, any work performed after the death of the sole proprietor or the termination of the entity's authorization to do business in New Mexico shall constitute unlicensed activity under the Act and may be prosecuted by CID.

I. Compliance with Parental Responsibilities Act.

(1) Pursuant to the Parental Responsibilities Act (PRA), any person who fails to come into compliance with all court ordered child support obligations within thirty (30) days after receiving notice of non-compliance from CID will be subject to revocation of all licenses and certificates, pursuant to the due process requirements of the Uniform Licensing Act.

(2) The only proof of compliance with the PRA is a certificate of compliance issued to the license or certificate holder by the Human Services Department (HSD certificate).

(3) If a license or certificate has been suspended or revoked pursuant to the requirements of the PRA and this rule, it shall be re-instated upon receipt by CID of an HSD certificate and payment of any fines, fees or other amounts owing to CID, subject to the following conditions:

(a) If more than ninety (90) days have elapsed since the expiration date of a revoked license, the license shall not be reinstated. The respondent will be required to apply for a new license pursuant to the requirements of the Act and these rules; provided, however, that the one (1) year waiting period required by section 60-13-29 of the Act shall not apply.

(b) If more than one hundred eighty (180) days have elapsed since the expiration of a revoked certificate of competence, the certificate shall not be reinstated. The respondent will be required to apply for a new certificate pursuant to the requirements of the Act and these rules; provided, however, that the one (1) year waiting period required by section 60-13-29 of the Act shall not apply.

(c) If a more than two (2) years have elapsed since the date of an order revoking a qualifying party certificate, the certificate shall not be reinstated. The respondent will be required to apply for a new certificate pursuant to the Act and these rules; provided, however, that the one (1) year waiting period required by section 60-13-16 of the Act shall not apply.

(d) Nothing in this rule or the PRA shall require CID to reinstate a license or certificate if cause exists to suspend or revoke the license or certificate on other grounds.

[14.6.3.8 NMAC – Rp, 14 NMAC 6.3.8, 12-1-00]

14.6.3.9 PAYMENT OF ADMINISTRATIVE PENALTIES.

A. A person whose license or certificate has been suspended pursuant to Section 60-13-23, 24 or 36 of the Act shall not be eligible for reinstatement of the license or certificate until all fees and administrative penalties assessed have been paid in full, except as allowed in subsection C, below.

B. A person whose license or certificate has been revoked pursuant to Section 60-13-23, 24 or 36 of the Act shall not be eligible to apply for a new license or certificate until all fees and administrative penalties assessed have been paid in full, except as allowed in subsection C, below.

C. The commission may authorize CID to establish a payment plan for administrative penalties assessed against a licensee. If the licensee demonstrates good faith in making payments, CID may issue a new license or certificate or reinstate a suspended license or certificate before full payment has been made. If a licensee obtains a license or certificate pursuant to this provision, and thereafter fails to remain current on payments, he may be subject to additional disciplinary action, including suspension, revocation of the license or certificate and additional administrative penalties.

D. Nothing in this rule shall enable a person to apply for or be issued a license or certificate if ineligible for licensure under any other provision of the Act or Title 14, NMAC.

[14.6.3.9 NMAC - Rp, 14 NMAC 6.3.9, 12-1-00]

History of 14.6.3 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.

Other History:

That portion of CID 90-1, Construction Industries Rules And Regulations, filed 05-31-90 -- renumbered, reformatted and amended to 14 NMAC 6.3, Housing and Construction – Construction Industries Licensing – Contractor’s License Requirements, filed 09-03-96.

14 NMAC 6.3, Housing and Construction – Construction Industries Licensing – Contractor’s License Requirements, filed 09-02-97

14 NMAC 6.3, Housing and Construction – Construction Industries Licensing – Contractor’s License Requirements, filed 04-17-00

14.6.3 NMAC, Housing and Construction – Construction Industries Licensing – Contractor’s License Requirements, effective 12-1-00

History of Repealed Material:

14 NMAC 6.3, Housing and Construction – Construction Industries Licensing – Contractor’s License Requirements, repealed effective 12-1-00.