



New Mexico Regulation and Licensing Department

CONSTRUCTION INDUSTRIES DIVISION

P.O. BOX 25101 ▪ Santa Fe, NM 87504 ▪ Ph (505) 476-4675 ▪ Fax (505) 476-4685
5500 San Antonio Dr. NE ▪ Albuquerque, NM 87109 ▪ Ph (505) 222-9800 ▪ Fax (505) 765-5670
505 S. Main St., Suite 118 ▪ Las Cruces, NM 88004 ▪ Ph (575) 524-6320 ▪ Fax (575) 524-6319
www.rld.state.nm.us/construction

August 4, 2016

Susana Martinez
GOVERNOR

Robert "Mike" Unthank
SUPERINTENDENT

David Jablonski
DEPUTY
SUPERINTENDENT

Claudia Armijo
DEPUTY GENERAL
COUNSEL

Pat McMurray
DIRECTOR

Sally Galanter
COUNSEL

From: Pat McMurray, CID Director
To: Rules Hearing Presiding Officer Fellows and Construction Industries Commission Members
Re: Rules Hearing of August 4, 2016

Proposed changes are being suggested to the General Provisions of NMAC 14.5.1 to clean up redundant and unnecessary phraseology and to ensure that the rules do not provide for actions not allowed by the Construction Industries Licensing Act ("CILA"). Additionally the entire Act must be considered in creating the rules not just a particular statute.

Examples of changes that are proposed to bring the rules into compliance with what is allowed by the Act include:

1. Definitions were added to provide more accurate and more explanatory terms for easy understanding. Examples include "Authority Having Jurisdiction" designating the political subdivision having permitting and enforcement authority and is a term currently used in both code and other rules. "Life Safety Hazard" defines when life safety is a concern. Trade Bureau Chief, "TBC", adds language defining this role's compliance with CILA NMSA 1978, § 60-13-2; § 60-13-33; § 60-13-41 and § 60-13-44. Certified Building Official, "CBO", adds language defining this role's compliance with CILA NMSA § 60-13-2 and § 60-13-41. "Inspector" adds language defining this role's compliance with CILA NMSA § 60-13-2 and § 60-13-41.

2. There are many sections of the rule that simply indicate "building official" without designating if the building official is the state trade bureau chief and/or his/her inspectors or a local jurisdiction having a certified building official. Because of this vagueness in the rules often there is confusion as to each entity's responsibilities. The CILA is clear and it is necessary to modify the rules to reflect the authority provided each entity. Local jurisdictions have authority to create their own ordinances as long as their minimum standard is the CILA. The trade bureaus responsibilities are also clear including that the CILA designates the trade bureaus and their respective chiefs as the ultimate authority in the state of their respective trades. The general provisions were inadequate in explaining these responsibilities as well as providing responsibilities to municipality/local political subdivisions which were not provided in the CILA.

3. 60-13-11 (D) and 60-13-44 (F) require that, at a minimum, municipalities/non-state political subdivisions can have their own permitting and enforcement unit and can create their own ordinances as long as, the state

Administrative Services Division
(505) 476-4800

Alcohol and Gaming Division
(505) 476-4875

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(505) 476-4600

Construction Industries Division
(505) 476-4700

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(505) 476-4885

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(505) 476-4770

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(505) 476-4580

laws and codes, are the minimum standard. They can create ordinances that are more strict than the CILA but not less strict than the CILA. The CILA is established as the minimum allowed. NMSA 1978, § 3-18-6 titled “Building construction and restrictions; establishing fire zones” provides political subdivision’s authority to create their own laws and enforce their own ordinances. However, while allowing a local jurisdiction to create their own ordinances as to contracting, the CILA delegates significant authority to the Division and particularly to the trade bureaus to oversee the local inspectors and the local jurisdiction actions to ensure public safety.

4. Revisions

A. Corrections were made adding definitions to include “Trade Bureau Chief” and New Mexico Certified Building Official” to differentiate the state’s Certified Building Official (NMCBO) from the political subdivision/municipality Certified Building Official (CBO). More explanation was provided as to statutory responsibilities. Revisions to rules clearly noted when the rule referred to a trade bureau chief versus a local certified building official and a state inspector versus a local inspector. By using the definitions provided in CILA such as “certified building official” the rules are reflective of the duties noted in the CILA.

B. The rules were confusing as to the authority of a municipality/local political subdivision’s authority as to permitting and enforcement of its ordinances versus the authority of the state to enforce the CILA, its rules and codes.

- 14.5.1.9 titled “Conflicts” discusses when and who has the authority regarding conflicts with prior codes, between construction codes and codes adopted by other agencies and with requirements of other agencies. The present version of the rule simply designates this authority to a “building official” whereas 60-13-44 (C) and (D) specifically designate this authority to the General Construction Bureau Chief. The proposed version makes this correction to be in accordance with the CILA
- 14.5.1.10 titled “Building Officials” in the present version also designates a “building official” with the authority to render interpretations of the construction code. It is not clear that this responsibility is limited to the state bureau chiefs and in particular the general construction bureau chief but would appear to allow a building official of a municipality to have this authority. Such is not allowed by the CILA.
- 14.5.1.11 discusses “Alternative methods and assemblies of construction” including when potential variances from the codes are proposed and if allowed. The present rule again designates “building official” which arguably could mean either the state or local building official. However the CILA limits this authority to the particular trade bureau and thereby its chief in their particular specialty [electrical, mechanical/plumbing, general construction, LP Gas].
- 14.5.1.13 (A) titled “Technical advisory council” creates the council to provide technical advice as to code and the technical aspects of each trade.

However it is redundant in that it allows for either the trade bureau chief or the council chair to call a meeting. The chief is the chair of the council. The present rule allows the council to review budgets and permits and inspect performance. These responsibilities by statute are the responsibility of the Division and/or the Commission. This portion has been deleted to note its purpose

- 14.5.1.13 (C) titled “Appeals” allows for all appeals to be initially sent to the Director of the Division. However the CILA only indicates one type of appeal that would be directed to the Director, that is, an issue as to “similar names”. 60-13-13.2. The rule has been corrected to note this limitation.

5. Some Statutory provisions of interest

- A. 60-13-2 (O) designates the “Chief” as the administrative head of the trade bureau.
- B. 60-13-2 (U) defines “certified building official” as an employee of any county, municipality or political subdivision with broad knowledge of construction, five years experience as a contractor/inspector and held a management position in construction for five of past ten years.
- C. 60-13-33 lists the powers and duties of the trade bureaus to include administering exams, certifying individuals/entities in the trade, performing inspections of all occupations and trades, recommend rules and regulations for promulgation, all administrative duties, and all other duties necessary and incident to fulfill the responsibilities of the Construction Industries Licensing Act. 60-13-38, 60-13-41, 60-13-42, 60-13-44, 60-13-45, 60-13-46 and 60-13-47 explain additional details of the trade bureau’s authority
- D. 60-13-41 allows non-state political subdivisions to have their own inspectors and issue permits; however, the respective trade bureau must certify the inspectors and ensures that the political subdivision is complying with the law and their inspectors are properly completing their responsibilities.
- E. 60-13-44 explains the responsibilities of the trade bureau as to their responsibility to establish the minimum standards for their respective area of expertise, ie, electrical, mechanical/plumbing, general construction and LP gas.

Currently, there are language, process and procedure conflicts not supported by the CILA in NMAC General Provisions 14.5.1, Permits 14.5.2, and Inspections 14.5.3. To correct these errors and to be clear as to the authority of the local jurisdictions, as well as the state trade bureaus, definitions were added and corrections to the rules to clearly designate the authority of each local political subdivisions as well as the state political subdivision designating when each has joint authority in their respective jurisdictions and when each has differing authority. These revisions will correct the currently adopted rules that are outdated and do not support the division’s business practices. These changes include all newly adopted License classifications and scopes, rule changes and proposed code changes.