

New Mexico Register

The official publication for all official notices of rulemaking
and filing of proposed, adopted and emergency rules.

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New Mexico Register

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Notices of Rulemaking and Proposed Rules

HEALTH, DEPARTMENT OF

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on the proposed repeal and replace of 7.4.6 NMAC, "Requirements Governing the Harm Reduction/ Syringe Exchange Program". The public hearing will be held on August 17, 2022 at 9:00 a.m. via Microsoft Teams, via telephone, and comments will be received via email through the conclusion of the hearing.

The hearing is being held via internet, email, and telephonic means due to the concerns surrounding Coronavirus and in consideration of Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of a Public Health Emergency, and any subsequent executive orders. Members of the public who wish to submit public comment regarding the proposed rule changes will be able to do so via video conference and via telephone during the course of the hearing, and by submitting written comment before the conclusion of the hearing.

The hearing will be conducted to receive public comments regarding the proposed repeal and replace of rule 7.4.6 NMAC, concerning the implementation of the requirements and authority of the New Mexico Harm reduction Act, Section 24-2C-1 to 24-2C-6 NMSA 1978

The legal authority authorizing the proposed repeal and replacement of the rule by the Department is at Subsection E of Section 9-7-6 NMSA 1978, The Harm Reduction Act, Section 24-2C-1 to 24-2C-5 NMSA 1978, the Public Health Act, Section 24-1-3 NMSA 1978, and Section 30-31-25.1 NMSA 1978 of the Controlled Substances Act.

Purpose of the proposed repeal and replace are listed below:

7.4.6.1 - Issuing Agency:

- To identify the Department of Health, Public Health Division, Bureau of Infectious Diseases as the division responsible for issuing and implementing these rules.

7.4.6.2 - Scope:

- Included to identify the community and population that will be affected by these regulations.

7.4.6.3 - Statutory Authority:

- Identifies the statutory authority allowing the department of health to issue these rules.

7.4.6.4 - Duration

- Identifies these rules as permanent rules in effect until lawfully removed.

7.4.6.5 - Effective date

- Provides for when these rules will be in effect.

7.4.6.5 - Objective

- Defines the objective of the rules as implementing the requirements of the harm reduction act and the purpose of the regulations.

7.4.6.7 - Definitions

- Provides necessary definitions for terms as they are applied throughout the rules.

7.4.6.8 - General Provisions Governing the HRP Application Approval and Revocation Processes

- Describes the application process for becoming a harm reduction provider. It also designates direct service providers for individuals who use substances as automatic HRP's for the purposes of providing fentanyl test strips or other testing devices. This is included so that organizations who provide front line services on a daily basis who may not be a direct HRP can still provide the lifesaving testing devices to their clients under the protections of the harm reduction act.

7.4.6.9 - Harm Reduction Provider Requirements

- This section states what is required to become a harm reduction provider and for operations as a harm reduction provider.

7.4.6.10 - Supplies Provided

- This Section defines which supplies the department has designated as items that will reduce negative health consequences associated with substance use, prevent overdose mortality or encourage participant engagement in other programming designed to improve overall community health.

- Safer smoking supplies including screens, pipe covers, wooden pushers, copper scrub pads, aluminum foil and straws designed to inhale substances are designated as items which can reduce negative health outcomes associated with substance use and items which will improve participant engagement due to when these items are shared or other less healthy options are used it can lead to the transmission of blood borne pathogens, respiratory infection, and other soft tissue injuries such as burns. Due to the changing nature of substance use, more individuals are smoking and not engaged with harm reduction programs, this decreases participant engagement in other program services such as overdose prevention and navigation into substance use treatment. Evidence has also shown individuals who are provided supplies for a safer method of consuming substances than injection, individuals are willing to switch from injecting to smoking.

- Safer snorting supplies including clean spoons for measurement, clean plastic razors, and clean flat surfaces are designated as items which can reduce negative health outcomes associated with substance use and items which will improve participant engagement due to when these items are shared it can lead to the transmission of hepatitis c or other upper respiratory illness. Snorting substances is a significantly safer route of administration than injection and research shows when

provided with these items people who inject substances are willing to switch to a safer route of consumption. Providing these items will lead to increased engagement for people who inhale substances, this will allow for additional health education messaging and overdose prevention and naloxone distribution services.

- Safer injecting supplies including syringes and needles, metal containers for cooking substances, cotton pellets or other filtration devices, twist ties, tourniquets, sterile water and saline, ascorbic acid, and biohazard containers for disposal of used syringes and needles are designated as items which reduce cases of negative health outcomes of substance use, sterile items which can be used to reduce harm associated with substance use, and items which can be used to improve participant engagement due to the fact that injection of substances is associated with the most serious negative health outcomes. Sharing of syringes or any of the items used to inject can lead to the transmission of blood borne pathogens such as hepatitis c and the Human Immunodeficiency Virus (HIV). Sharing of injection equipment or syringes is associated with higher rates of serious soft tissue infection. It has also been shown that individuals engaged in harm reduction and provided with these supplies are more likely to receive and succeed in substance use treatment. Sharps containers will also be provided to ensure individuals are disposing of used injection equipment in a safe manner.

7.4.6.11 - Participant Enrollment

- This section defines the process for enrolling participants in HRP programs and how participant cards will be issued and maintained.

7.4.6.12 - Harm Reduction Program Participant Requirements

- This section designates the requirements for the participants of the harm reduction program.

Any interested member of the public may attend the hearing and submit

data, views, or arguments either orally or in writing on the proposed rule amendments during the hearing. To access the hearing by telephone: please call 1-505-312-4308 and enter meeting ID 185 897 54#. Your telephone comments will be recorded. To access the hearing via internet: please send an email to Joshua.swatek@state.nm.us to be sent an invitation link by no later than 5pm MDT August 15th 2022; You may also provide comment via Chat during the live streaming.

Written public comment regarding the proposed rule amendments can be submitted by either mailing the comment to the following address:

Sheila Apodaca
Office of General Counsel
New Mexico Department of Health
1190 St. Francis Drive, Suite N-4095
Santa Fe, NM 87505
(505) 827-2997

Or preferably by e-mailing the comment to the e-mail address: Sheila.Apodaca@state.nm.us.

Written comments must be received by the close of the public rule hearing on August 17, 2022. All written comments will be published on the agency website at <http://nmhealth.org/about/asd/cmo/rules/> within three (3) days of receipt and will be available at the New Mexico Department of Health Public Health Division for public inspection.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Sheila Apodaca by telephone at (505) 827-2997. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

The foregoing are summaries of the proposed rule. The proposed rule includes various additional substantive revisions not identified here. Free copies of the full text of the proposed rule may be obtained

online from the Department's website at <https://nmhealth.org/publication/regulation/>

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE OF RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rule 8.200.400, *Medicaid Eligibility-General Recipient Rules*, 8.249.400, *Refugee Medical Assistance (RMA) Program-Recipient Requirements*, and 8.249.600, *Refugee Medical Assistance (RMA) Program-Benefit Description*.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: July 26, 2022
Hearing Date: August 26, 2022
Adoption Date: Proposed as January 1, 2023
Technical Citations: Office of Refugee Resettlement (ORR)-DCL 22-12 Expansion of RMA Eligibility Period

The Department is proposing to amend the rules as follows:

Background

The Federal Office of Refugee Resettlement (ORR) issued guidance that expands the Refugee Medical Assistance (RMA) eligibility period from eight months to 12 months for ORR-eligible populations whose date of eligibility for ORR benefits is on or after October 1, 2021. Historically the RMA eligibility period has been eight months since federal fiscal year 1992 due to insufficient appropriations.

Other minor changes were made to

these rules to replace outdated terms and correct wording errors.

8.200.400 NMAC

Section 10 has been updated to change the RMA coverage period from eight to 12-months.

8.249.400 NMAC

Section 6 and 9 were updated to change the text from eight to 12-months.

8.249.600 NMAC

Sections 9, 11, 12, 14, and 15 were updated to change the text from eight to 12-months.

The register for these proposed amendments to these rules will be available July 26, 2022 on the HSD web site at <https://www.hsd.state.nm.us/lookingforinformation/registers/> and <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting MAD at (505) 827-1337.

The Department proposes to implement these rules effective January 1, 2023. A public hearing to receive testimony on these proposed rules will be held **via conference call on Friday, August 26, 2022, at 9 a.m. Mountain Time (MT).** **Conference phone number: 1-800-747-5150. Access Code: 2284263.**

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATT: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must

be received no later than 5 p.m. MT on August 26, 2022. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-1337. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

REGULATION AND LICENSING DEPARTMENT CANNABIS CONTROL DIVISION

NOTICE OF PROPOSED RULE AMENDMENTS

Public Hearing. The New Mexico Regulation and Licensing Department (RLD), Cannabis Control Division (CCD), will hold a public rule hearing on Friday, August 12, 2022, at 9:00am. Due to the ongoing public health concerns posed by the threat of the contagious disease COVID-19, the rule hearing will be virtual via an Internet-based video conference and

via telephone. A PDF of the proposed rule and meeting details may be accessed through the Cannabis Control Division website: <https://ccd.rld.state.nm.us> or from Terry Last at the contact below.

Purpose of Rule Hearing. The purpose of the public rule hearing is to receive public commentary to make amendments to existing rules. Proposed rule amendments will establish cannabis licensee health and safety rules that were previously promulgated on an emergency basis. Additional amendments will add rules related to the labeling of cannabis and cannabis products that have been tested according to required tests.

Any technical information used to inform the proposed rules will be accessible by visiting: <https://ccd.rld.state.nm.us/>.

Statutory Authority. Legal authority for this rulemaking may be found the Cannabis Regulation Act, NMSA 1978 Section 26-2C-1 through Section 26-2C-42 NMSA (2021). Additional authority may be found at NMSA 1978 Section 9-7-6(E) (2017) and at NMSA 9-16-6 (2021).

Public Comment. The Division will begin accepting public comment on the proposed rules beginning Tuesday July 12, 2022. Please submit written comments on the proposed rules to Robert Sachs, Deputy Director of Policy for the Cannabis Control Division, via electronic mail at ccd.publiccomment@state.nm.us. Written comment may also be submitted by visiting the Division website at ccd.rld.state.nm.us or by mailing the comment to the following address:

Cannabis Control Division
Public Comment
c/o Robert Sachs
P.O. Box 25101
Santa Fe, NM
87504

All written public comments must be received by 5:00pm on Friday, August 12, 2022. Persons will also be given the opportunity to present their comments at the rule hearing. Comments received prior to the rule hearing will be posted to the RLD website at: ccd.rld.state.nm.us.

No later than July 12, 2022, interested parties may obtain and review copies of the proposed rules and public comments by going to the Cannabis Control Division website at <https://ccd.rld.state.nm.us/> or by contacting the Cannabis Control Division at rld.cannabiscontrol@state.nm.us or (505) 476-4995.

Any individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing should contact Terry Last, Executive Assistant for the Cannabis Control Division, rld.cannabiscontrol@state.nm.us or (505) 476-4995 at least seven (7) days prior to the hearing.

Summary of Proposed New Rules.

16.8.3 NMAC: PACKAGING, LABELING, ADVERTISING, MARKETING, AND COMMERCIAL DISPLAY REQUIREMENTS FOR CANNABIS PRODUCTS

Part 3 provides the requirements related to packing, labeling, and commercial display of cannabis products as well as advertising and marketing requirements for licensees. The proposed rules to be discussed at the hearing will include proposed rules related to packaging and labeling requirements for cannabis products.

16.8.6 NMAC: HEALTH AND SAFETY, FOOD AND PRODUCT SAFETY, ENVIRONMENTAL IMPACTS, AND NATURAL RESOURCES

Part 6 will provide the requirements for licensee compliance with necessary standards in health and safety, food and product safety,

environmental impacts, and natural resources.

End of Notices of Rulemaking and Proposed Rules

Adopted Rules

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico Register as provided in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

ECONOMIC DEVELOPMENT DEPARTMENT

**This is an amendment to 5.5.50
NMAC, Sections 10 & 12, effective
7/12/2022.**

5.5.50.10 REIMBURSABLE EXPENSES:

A. The following expenses may be eligible for reimbursement through JTIP

(1) A percentage of trainee wages for up to six months of initial training.

(2) Cost of providing custom classroom training at a New Mexico post-secondary public educational institution at a maximum of \$35 per hour of training per trainee and a cap of \$1,000 per employee.

(3) A percentage of intern wages for up to 640 training hours.

B. Standard reimbursement rates for wages range up to seventy-five percent. Positions that meet the JTIP requirements with starting wages at levels eligible for the high wage job tax credit may be also eligible for an additional five percent wage reimbursement. Positions filled by trainees who meet any of the three following criteria may be eligible for an additional five percent wage reimbursement above the standard rates if the approved entry wage is at least the minimum rate for the Job Zone as outlined in the JTIP wage chart on Paragraph (2) of Subsection D. of 5.5.50.10 NMAC for Zones 1, 2, 3 and 4:

(1) Trainee has graduated out of the New Mexico Foster Care System.

(2) Trainee has graduated within the past 12 months from a post-secondary training or

academic program at a New Mexico institution of higher education.

(3) Trainee is a U.S. veteran.

Companies may combine any one of the three conditions above with the additional five percent wage reimbursement for high-wage positions, for a total additional wage reimbursement not to exceed ten percent above the standard rates. If a company is participating in other job reimbursement training programs such as the Workforce Innovation and Opportunity Act (WIOA), the combined reimbursement to the company may not exceed one hundred percent.

C. The job training incentive program allows for reimbursement only at the completion of training. If an employee does not complete the training period, no funds can be claimed for that employee. If another trainee can be hired in that position within the six month hiring period and complete training before the contract end date, a claim can be submitted for the successful trainee.

D. Wage reimbursement:

(1) Trainee wages are generally the largest expense associated with training. JTIP reimburses the company for a significant portion of trainee wages during the initial training period. The percentage of standard reimbursement ranges up to seventy-five percent, depending on the business location.

(2) The number of hours eligible for reimbursement varies by position, up to 1,040 hours (six months). The number of hours eligible for reimbursement for each position is based on the O*NET (occupational information network) job zone classification for the O*NET position which most closely matches the

company's job description and the wage paid the trainee at the point of hire. The O*NET system, sponsored by the US department of labor, is available at <http://onetonline.org>. Each job in the O*NET system is assigned to one of five job zones, with recommended training hours for each zone. For fiscal years [2022] 2023-2024, the JTIP board may maintain wage effective in the first year of JTIP approval for the length of the job ramp within the project participation agreement (PPA) for companies that are also engaged in a LEDA agreement with the economic development department provided the company meets job creation requirements within the period and wages do not fall below the statewide minimum wage.

The number of recommended hours for fiscal years [2022,] 2023 and 2024 are outlined in the tables below.

Continued Next Page

General Guideline for Duration of Reimbursable Training Time/Wages for FY2022 (July 1, 2021-June 30, 2022)

Job Zone	Definitions	SVP Range/ Conversions	Hours	Min. Wage @ Hiring - Urban	Min. Wage @ Hiring - Rural	Days	Weeks
1	Little or no preparation needed	Below 4.0	320	14.00	11.90	40	8
2a	Some preparation needed	4.0 to < 6.0	480	15.50	12.40	60	12
2	Some preparation needed	4.0 to < 6.0	640	17.00	12.90	80	16
3a	Medium preparation needed	6.0 to < 7.0	800	18.50	14.40	100	20
3	Medium preparation needed	6.0 to < 7.0	960	20.00	15.40	120	24
4	Considerable preparation needed	7.0 to < 8.0	1,040	23.00	16.40	130	26
	Align with HWJTC	Additional five percent		28.85	19.23		

General Guideline for Duration of Reimbursable Training Time/Wages for FY2023 (July 1, 2022-June 30, 2023)

Job Zone	Definitions	SVP Range/ Conversions	Hours	Min. Wage @ Hiring - Urban	Min. Wage @ Hiring - Rural	Days	Weeks
1	Little or no preparation needed	Below 4.0	320	15.00	12.75	40	8
2a	Some preparation needed	4.0 to < 6.0	480	16.50	13.25	60	12
2	Some preparation needed	4.0 to < 6.0	640	18.00	13.75	80	16
3a	Medium preparation needed	6.0 to < 7.0	800	19.50	15.25	100	20
3	Medium preparation needed	6.0 to < 7.0	960	21.00	16.68	120	24
4	Considerable preparation needed	7.0 to < 8.0	1,040	24.00	17.68	130	26
	Align with HWJTC	Additional five percent		28.85	19.23		

General Guideline for Duration of Reimbursable Training Time/Wages for FY2024 (July 1, 2023-June 30, 2024)							
Job Zone	Definitions	SVP Range/ Conversions	Hours	Min. Wage @ Hiring - Urban	Min. Wage @ Hiring - Rural	Days	Weeks
1	Little or no preparation needed	Below 4.0	320	15.50	13.18	40	8
2a	Some preparation needed	4.0 to < 6.0	480	17.00	13.68	60	12
2	Some preparation needed	4.0 to < 6.0	640	18.50	14.18	80	16
3a	Medium preparation needed	6.0 to < 7.0	800	20.00	15.68	100	20
3	Medium preparation needed	6.0 to < 7.0	960	21.50	16.68	120	24
4	Considerable preparation needed	7.0 to < 8.0	1,040	24.50	17.68	130	26
	Align with HWJTC	Additional five percent		28.85	19.23		

(3) The JTIP staff will ensure that the O*NET occupations match the company job description for the requested position and that training hours requested do not exceed the O*NET guideline. The board will also review the company's educational and experience requirements of the applicants to determine the degree of match with the company's job descriptions. The JTIP board may award training hours based on the O*NET guideline unless the company clearly substantiates that additional hours are required. In determining the appropriate number of training hours, the board considers the training plan, the training objectives, and the hourly wage at point of hire associated with the position.

(4) The board has also adopted a wage requirement for JTIP participation. The wage requirement varies by job zone and company location (rural/urban). These requirements are listed in the tables above. If a company

establishes a wage range which includes wages below the minimum wage recommended for that position and job zone, the number of hours eligible for reimbursement may be reduced from the O*NET recommended hours as per criteria and procedures set forth by and at the discretion of the JTIP board, which may include consideration of the company benefits package. Generally, the hours are reduced to the hours allowed for the next lower job zone. The reimbursement percentages may be adjusted at the discretion of the board based on availability of funds or sufficient appropriations.

(5) The percentage of wages reimbursed depends primarily on the business location. The categories for location are urban, rural, frontier, economically distressed, and Native American land.

(a) Companies located in urban areas (cities with population above 60,000 in the most recent federal decennial

census) and Class H counties (i.e., Los Alamos) are reimbursed at up to fifty percent for all eligible training hours. Urban communities are: Albuquerque [(545,852)] (562,599), Las Cruces [(97,618)] (112,914), Rio Rancho [(87,521)] (105,834), and Santa Fe [(67,947)] (88,193).

(b) Companies located in rural areas, outside those listed above are reimbursed at up to sixty-five percent for all eligible training hours.

(c) Companies located in frontier areas (communities with a population of 15,000 or fewer and outside an MSA) are reimbursed at up to seventy-five percent for all eligible training hours.

(d) Companies located in an economically distressed area in New Mexico are eligible for up to seventy-five percent reimbursement. To receive up to seventy-five percent reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment

rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions such as recent significant job losses due to business closures or down-sizing, a decline in population, loss of gross receipts or other factors.

(e)

Companies located on Native American reservations are eligible for up to seventy-five percent reimbursement.

(f)

Companies located in federally designated colonias in New Mexico are eligible for up to seventy-five percent reimbursement for all eligible training hours.

(6) JTIP

eligible positions with starting wages eligible for the high wage job tax credit may be eligible for an additional five percent reimbursement. These requirements are a hiring salary of \$60,000 or higher in an urban or class H county and a hiring salary of \$40,000 or higher in a rural location or economically disadvantaged area. Trainee requirements are still factors for JTIP eligibility. The percentage of wages reimbursed for high-wage positions filled by trainees who do not meet the one-year residency requirement is unique and not subject to any additional wage reimbursement above the standard rate. Companies located in urban areas and Class H counties are reimbursed up to thirty percent for all eligible training hours. Companies located in rural areas are reimbursed up to forty percent for all eligible training hours. Companies located in frontier areas are reimbursed up to fifty percent for all eligible training hours.

(7) JTIP eligible

positions filled by trainees who have graduated within the past 12 months from a post-secondary training or academic program at a New Mexico institution of higher education may be eligible for an additional five percent reimbursement.

(8) JTIP eligible

positions filled by U.S. veterans may

be eligible for an additional five percent reimbursement.

(9) Trainee

has graduated out of the NM Foster Care System may be eligible for an additional five percent reimbursement. ~~[This provision is effective for fiscal years 2021 and 2022 and will be reassessed as part of the annual policy amendment process for FY2023.]~~

(10) Additional guidelines for wage reimbursement:

(a)

Eligible trainee hours shall not exceed 1,040 hours per trainee (six months) based on the company's scheduled workweek, not to exceed 40 hours per week.

(b)

Reimbursement is calculated on base pay only. Bonus pay, overtime, commission and stock options are not eligible for reimbursement.

(c)

If the company compensates the trainee for annual, holiday or sick leave during the approved training period, those hours are included in the approved training hours at the base rate.

(d)

Any training hours that exceed the contracted amount are the responsibility of the company.

(e)

If a company is participating in other job reimbursement training programs such as WIOA, the combined reimbursement to the company may not exceed one hundred percent.

(f)

Additional wage reimbursement may not exceed ten percent above the standard rates. Companies may combine the additional five percent wage reimbursement for high-wage jobs with one of the three following conditions for an additional five percent wage reimbursement provided the entry wage is at least the minimum rate for the job zone as outlined in the JTIP wage chart on Paragraph (2) of Subsection D of 5.5.50.10 NMAC for Zones 1, 2, 3 and 4:

(i)

the trainee has graduated out of the New Mexico foster care system;

(ii)

the trainee has graduated within the past 12 months from a post-secondary training or academic program at a New Mexico institution of higher education;

(iii)

the trainee is a U.S. veteran. High-wage positions filled by trainees who do not meet the one-year residency requirement are not eligible for additional wage reimbursement above the standard rate.

E. Reimbursement for custom classroom training:

Payment for custom classroom training services provided by public post-secondary educational institutions is restricted to instructional costs. The rate of reimbursement to the institution is at a maximum of \$35 per hour per trainee with a cap of \$1,000 per trainee. Instructional costs for classroom training conducted by an educational institution may include course development, instructional salaries, relevant supplies and materials, expendable tools, accounting services, and other costs associated with conducting the training program. No training equipment may be purchased or rented using JTIP funds. [5.5.50.10 NMAC - Rp, 5.5.50.10 NMAC, 6/26/2018; A, 1/1/2020; A, 7/14/2020; A, 7/12/2022]

5.5.50.12 PROCEDURAL

OVERVIEW: The procedures for completing a funding proposal and the administration of a project are explained in detail in the JTIP online application and proposal guide and the JTIP policy and procedures manual.

A. Proposals

and contract amendments must be submitted to the economic development department, JTIP, no less than four weeks before the JTIP board meeting at which the proposal will be considered for funding.

B. The contract start

date is the date of the board meeting at which funding was approved.

C. Eligible job

openings must be registered with the New Mexico workforce connection.

D. The company must hire trainees within six months of the contract start date.

E. The company must submit an online hiring report at the end of the six month hiring period.

F. Claims for reimbursement should be submitted as trainees complete training.

G. Each project is subject to compliance reviews throughout the term of the contract.

H. The company must arrange for an agreed upon procedure in accordance with generally accepted standards and the general requirements included in the statements on standards for attestation engagements, as issued by the American institute of certified public accountants upon completion of the training.

I. The final claim for reimbursement should be submitted with the completed agreed upon procedures report.

J. Yearly follow-ups may be conducted to show effectiveness of the program, including surveys to address company retention, wage rates of program trainees and business and industry needs for industry recognized certifications and credentials by the economic development department, the department of workforce solutions and the public education department.

K. Companies that fail to comply with all established operating requirements, closeout procedures, and follow-up studies are not eligible to apply for future participation in JTIP.

L. Companies that are not in good standing with other Economic Development Department programs may not be eligible for JTIP.

M. EDD and JTIP are taking steps to address setbacks that JTIP companies may encounter due to ~~[the COVID-19]~~ a public health emergency. The board has elected to adopt the following procedural adjustments through ~~[FY2022]~~ FY2023 in order to support companies during this time and into recovery.

(1) JTIP companies that are still within the 6-month hiring period and have suspended their hiring plans, may be allowed to extend the hiring period ~~[and therefore the project period, by the length of time the Governor's order was in effect.]~~ by two months. If the company deems it necessary to postpone hiring for a longer period, JTIP staff will work with the company on a re-application at the appropriate time.

(2) If a JTIP company has to temporarily reduce hours of operation ~~[during the time the Governor's order]~~ public health emergency was in place, part-time hours worked by JTIP trainees may be eligible for reimbursement provided the trainees have returned to full-time employment.

~~**(3)** If a JTIP company allows trainees to remote-work, the hours worked may be counted toward the JTIP training hours.~~

~~**(4)** The expansion requirement for all companies will be that the company headcount at the time of application must be at least at or above the two-year average headcount.~~
[5.5.50.12 NMAC - Rp, 5.5.50.12 NMAC, 6/26/2018; A, 7/14/2020; A, 7/12/2022]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT ENERGY CONSERVATION AND MANAGEMENT DIVISION

TITLE 3 TAXATION CHAPTER 3 PERSONAL INCOME TAXES PART 35 2021 SUSTAINABLE BUILDING TAX CREDIT

3.3.35.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department.

[3.3.35.1 NMAC - Rp, 3.3.35.1 NMAC, 07/12/2022]

3.3.35.2 SCOPE: 3.3.35 NMAC applies to the application and certification procedures for administration of the 2021 sustainable building tax credit for sustainable residential buildings, sustainable commercial buildings, the renovation of existing buildings, the permanent installation of manufactured housing or the installation of energy-conserving products to existing buildings.

[3.3.35.2 NMAC - Rp, 3.3.35.2 NMAC, 07/12/2022]

3.3.35.3 STATUTORY AUTHORITY: 3.3.35 NMAC is established under the authority of Section 7-2-18.32 and Subsection E of 9-1-5 NMSA 1978.

[3.3.35.3 NMAC - Rp, 3.3.35.3 NMAC, 07/12/2022]

3.3.35.4 DURATION: Permanent unless an earlier date is specified in a section.

[3.3.35.4 NMAC - Rp, 3.3.35.4 NMAC, 07/12/2022]

3.3.35.5 EFFECTIVE DATE: July 12, 2022, unless a later date is cited at the end of a section.
[3.3.35.5 NMAC - Rp, 3.3.35.5 NMAC, 07/12/2022]

3.3.35.6 OBJECTIVE: 3.3.35 NMAC's objective is to establish procedures for administering the program to issue a certificate of eligibility for the 2021 sustainable building tax credit for sustainable residential and commercial buildings, renovation of existing buildings or the installation of energy-conserving products to existing buildings.
[3.3.35.6 NMAC - Rp, 3.3.35.6 NMAC, 07/12/2022]

3.3.35.7 DEFINITIONS: For additional definitions refer to Sections 7-2-18.32 NMSA 1978.

A. "Annual cap" means the annual total amount of the 2021 sustainable building tax credit available to taxpayers owning sustainable buildings.

B. “Applicant” means a taxpayer who owns a sustainable residential or commercial building or manufactured housing or who has renovated an existing building or installed energy-conserving products in New Mexico and who desires to have the department issue a certificate of eligibility for a 2021 sustainable building tax credit.

C. “Application package” means the documents an applicant submits to the department to apply for a certificate of eligibility for a 2021 sustainable building tax credit.

D. “Build green New Mexico certification” means the verification by a department-approved verifier that a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.

E. “Build green New Mexico rating system” means the certification standards adopted by build green New Mexico in November 2014, which includes water conservation standards.

F. “Building project” means a new construction of a sustainable commercial or residential building, installation of manufactured housing, renovation of an existing building or installation of energy conserving products to existing buildings.

G. “Building type” means the primary use of a building or section of a building as defined in target finder.

H. “Certificate of eligibility” means the document with a unique identifying number that specifies the specific physical address for the approved 2021 sustainable building tax credit, the rating system certification level awarded to the building, the amount of qualified occupied square footage, a calculation of the maximum amount of the 2021 sustainable building tax credit for which the owner would be eligible, the date of issuance and the first taxable year the credit shall be claimed.

I. “Certification level” means one of the following:

- (1) LEED-H gold or build green New Mexico gold;
- (2) LEED-H platinum or build green New Mexico emerald;

- (3) LEED-NC gold;
- (4) LEED-NC platinum;
- (5) LEED-EB (O&M) or LEED-CS gold;
- (6) LEED-EB (O&M) or LEED-CS platinum;
- (7) LEED-CI gold or LEED-CI platinum; and
- (8) manufactured housing.

J. “Code official” means the officer or other designated authority charged with the administration and enforcement of the building codes.

K. “Department” means the energy, minerals and natural resources department.

L. “Division director” means the director of the department’s energy conservation and management division.

M. “Insulation” is a material that contains properties to significantly control heat flow caused by radiation, convection and conduction. It is essential for controlling heat gain and loss through the building enclosure. Insulation is rated by R-value, the material’s resistance to heat flow.

N. “Install” or “installation” means the direct work of placing an energy conservation product into service to operate and reduce energy at the expected level for window, doors and insulation and contribute to electrification of commercial and residential buildings with energy star rated equipment.

O. “LEED certification” means the verification by the United States green building council, or a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within the applicable LEED rating system resulting in the issuance of a certification document.

P. “LEED registration” means the notification to the United States green building council that a project is pursuing LEED certification.

Q. “Most current” means the most recent date of the latest approved edition of a standard LEED rating system or the most recent date of an approved energy code adopted by the construction industries division of the regulation and licensing department.

R. “O&M” means operation and maintenance.

S. “2021 sustainable building tax credit” for the purposes of 3.3.35 NMAC means the personal income tax credit the state of New Mexico issues to an applicant for a sustainable residential or commercial building, manufactured home, renovation of an existing building or installation of energy-conserving products.

T. “New solar market development income tax credit” means the personal income tax credit enacted in 2020 issued to a taxpayer for a solar energy system the department has certified.

U. “Notice of approval” means the work complies in all respects with the latest building codes and has been approved by the code official.

V. “Project completion” means notice of approval by code officials for construction or renovation projects. New buildings must be completed after January 1, 2022. Renovation of existing buildings or installation of energy-conserving products must be completed after January 1, 2021.

W. “Rating system” means the LEED rating systems previously defined, the build green New Mexico rating system or the energy star program for manufactured housing.

X. “RESNET” means the residential energy services network, an industry not-for-profit membership corporation and national standards-making body for building energy efficiency rating systems.

Y. “Sustainable affordable buildings” means housing that serves the needs of low-income persons with an annual household adjusted gross income equal to or less than two hundred percent of the federal poverty level guidelines published by the United States department of health and human services.

Z. “Target finder” means the web-based program developed by the United States environmental protection agency to establish an energy goal in kilo british thermal units per square foot per year for predetermined building types.

AA. “Taxable year” means the calendar year or fiscal year upon the basis of which the net income is computed under the Income Tax Act, 7-2-1 *et seq.* NMSA 1978.

BB. “Taxpayer” means any individual subject to the tax imposed by the Income Tax Act, 7-2-1 *et seq.* NMSA 1978.

CC. “Taxpayer identification number” means the taxpayer’s nine-digit social security number or employer identification number provided by a business enterprise.

DD. “Verifier” means an entity the department approves to provide certifications under the build green New Mexico or LEED rating systems.
[3.3.35.7 NMAC - Rp, 3.3.35.7 NMAC, 07/12/2022]

3.3.35.8 GENERAL PROVISIONS:

A. The 2021 sustainable building tax credit may be claimed for taxable years prior to January 1, 2028.

B. A tax credit provided in 3.3.35.8 NMAC may not be claimed with respect to the same sustainable building under the 2021 sustainable building tax credit provided in the Corporate Income and Franchise Tax Act, for which a credit under the 2015 sustainable building tax credit pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act has already been claimed.

C. A person who is the owner of a building in New Mexico constructed to be a sustainable building or permanently installed manufactured housing and receives certification on or after January 1, 2022, may receive a certificate of eligibility for a sustainable building tax credit. A subsequent purchaser of a sustainable residential building may receive a certificate if no tax credit has previously been claimed for the building.

D. A person who is the owner of a commercial building having more than 20,000 square feet of temperature-controlled space and was built at least 10 years prior to the renovation or a building owner who has installed energy conservation products in an existing commercial or residential building having less than 20,000 square feet of temperature-controlled space on or after January 1, 2021, may receive a certificate of eligibility for a 2021 sustainable building tax credit.

E. The annual total amounts in a calendar year of the 2021 sustainable building tax credit pursuant to the Income Tax Act and Corporate Income and Franchise Tax Act available to taxpayers owning sustainable residential buildings is \$2,000,000, for sustainable commercial buildings is \$1,000,000 and for sustainable manufactured housing is \$250,000. Any excess funds not used in a taxable year shall not be carried forward to subsequent years. When the cap is reached in any category in a given year based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible 2021 sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance in a subsequent tax year, except for the last taxable year when the 2021 sustainable building tax credit is in effect;

(2) issue certificates of eligibility to applicants who meet the requirements for the 2021 sustainable building tax credit in a taxable year when applications in one sustainable building category exceed the annual cap in another sustainable building category and other categories are under the annual cap as determined by February 1 of any year in which the tax credit is in effect; or

(3) if no 2021 sustainable building tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the 2021 sustainable building tax credit is in effect.

F. Funding for renovation of commercial buildings is \$1,000,000 and for energy conservation products \$2,900,000.

G. In the event of a discrepancy between a requirement of 3.3.35 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.3.35 NMAC’s adoption, the existing rule governs.

H. All notices and applications required to be submitted to the department under 3.3.35 NMAC shall be submitted to the energy conservation and management division of the department.

I. New Mexico general requirements.

(1) Sustainable buildings shall have the internet connections capable of connecting to a broadband provider.

(2) New sustainable residential buildings shall be electric vehicle ready. The parking space shall be equipped with one 40 ampere, 208 volt or 240 volt dedicated branch circuit for charging electric vehicles. The termination point can be a receptacle or junction box and shall be near where electric vehicles can easily be charged. The extension cord shall be long enough to reach to a vehicle and meet electric code and electric vehicle manufacturing requirements.

(3) New sustainable commercial buildings shall be electric vehicle ready with at least ten percent of the parking spaces capable of charging electric vehicles and for residential buildings at least one parking space. All parking spaces required to be capable of charging electric vehicles shall be equipped with one 40 ampere, 208 volt or 240 volt dedicated branch circuit for charging electric vehicles. The termination point can be a receptacle or junction box and shall be near where electric vehicles can easily be charged. The extension cord shall be long enough to reach to a vehicle and meet electric code and electric vehicle manufacturing requirements.

(4) A fully electric new building shall have a permanent supply of only electricity for space heating, water heating, cooking appliances, clothes washing, clothes drying, dish washing, pools and spas. No natural gas or propane plumbing shall be installed. This is only required to obtain the 2021 sustainable building tax credit for fully electric new buildings.

(5) A fully electric existing building shall have a permanent supply of only electricity for space heating, water heating, cooking appliances, clothes washing, clothes drying, pools and spas. The existing building shall not be connected to natural gas or propane energy supplies. Existing natural gas or propane plumbing does not need to be removed for purpose of this provision, so long as it is disconnected. This is only required to obtain the 2021 sustainable building tax credit for fully electric new buildings.

(6) Sustainable building projects shall follow the latest LEED rating system requirements as established by the United States green building council or the latest build green New Mexico requirements.

J. Build green New Mexico sustainable single-family residential requirements.

(1) Build green emerald shall:

(a) comply with watersense standards for indoor plumbing fixtures and water using appliances that, on average, have flow rates equal to or lower than the flow rates required for certification;

(b) include one waterline in the front and one waterline in the back, below the frost line, that can be connected to a drip irrigation system if landscaping area is available; and

(c) use forty percent less energy than is required by following the prescriptive path of the most current residential energy conservation code adopted by the construction industries division of the regulation and licensing department.

(2) Build green gold shall:

(a) comply with watersense standards for indoor plumbing fixtures and water using appliances that, on average, have flow rates equal to or lower than the flow rates required for certification;

(b) include one waterline in the front and one waterline in the back, below the frost line, that can be connected to a drip irrigation system if landscaping area is available; and

(c) use thirty percent less energy than is required by following the prescriptive path of the most current residential energy conservation code adopted by the construction industries division of the regulation and licensing department.

(3) Build green New Mexico shall use department approved verifiers to determine a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.

K. Net zero homes shall be determined using an energy rating system index that gives a numerical score to a building where 100 represents the energy

use of a home relative to the 2006 International Energy Conservation Code and 0 is equivalent to a net zero home.

[3.3.35.8 NMAC - Rp, 3.3.35.8 NMAC, 07/12/2022]

3.3.35.9 VERIFIER ELIGIBILITY FOR ALL BUILDINGS:

A. The department reviews the qualifications for verifiers of the build green New Mexico or LEED-H certifications or LEED commercial buildings, which shall be provided annually to the department, based on the following criteria:

(1) the verifier is independent from the homebuilders or homeowners or commercial building owners that may apply for certification;

(2) the verifier has adequate staff and expertise to provide certification services, including:

(a) experience in green home building and commercial building services;

(b) ability to enlist and serve builders and provide training, consulting and other guidance as necessary;

(c) a method of auditing the certification process to maintain adequate stringency; and

(d) ability to administer the program and report on the certifications, audits and other relevant information the department may request;

(3) the verifier can identify the geographic area being served; and

(4) the verifier provides a statement that expresses a commitment to promoting energy-efficient green building with the highest standard of excellence.

B. The department approves verifiers after an entity submits a written request to the department that includes documentation on how the entity meets the required criteria. The department notifies the entity of the reasons for disapproving eligibility.

C. The verifier shall notify the department 30 calendar days prior to making any changes to its certification process or rating systems on which its prior approval by the department was based.

D. The department may rescind an existing verifier's approval at any time if it determines the above criteria are not being met.

E. The department notifies the verifier of the reasons for disapproving or rescinding eligibility as follows.

(1) The department shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier's approval. The verifier shall file a request for review within 20 calendar days after the department's notice is sent. The verifier shall address the request to the division director and include the reasons the department should not rescind the verifier's approval. The director shall consider the request. The division director may hold, at his or her discretion, a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the verifier on the later of 20 calendar days after receiving the request or five calendar days after a hearing is held.

(2) The verifier may appeal in writing to the department's secretary a division director's decision. The notice of appeal shall include the reasons that the secretary should overturn the division director's decision. The secretary shall consider any appeal from a division director's decision. The verifier shall file the appeal and the reasons for the appeal with the secretary within 14 calendar days of the division director's issuance of the decision. The secretary may hold a hearing, at his or her sole discretion, and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the verifier within the latter of 20 calendar days after receiving the request or five calendar days after the date the hearing concludes.

[3.3.35.9 NMAC – Rp, 3.3.35.9 NMAC, 07/12/2022]

3.3.35.10 APPLICATION FOR THE 2021 SUSTAINABLE BUILDING TAX CREDIT:

A. To obtain the 2021 sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the department using either a department-developed application form or approved electronic application system as directed by the division director. An applicant may obtain the department-developed application form or access to the electronic application system from the department.

B. An application package shall include a completed application form and attachments as specified on the application form or by the electronic application system. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application package for each sustainable residential or commercial building or manufactured house. An applicant for a multiuse building shall submit one residential application and one commercial application. The applicant shall submit all material in the application package on 8½ inch by 11-inch paper or using any approved electronic application system provided by the department as directed by the division director. If the applicant fails to submit the application form and required attachments at the same time as directed by the division director, the department may consider the application incomplete.

C. An applicant shall submit a complete sustainable building application package to the department no later than February 1 of the taxable year for which the applicant seeks the 2021 sustainable building tax credit. If an applicant does not submit a complete application package by February 1, any remaining funds in any other sustainable building category in the 2021 sustainable building tax credit funds, under the cap, may be used in

that taxable year for completed 2021 sustainable building or manufactured housing applications. The department may review application packages it receives after that date for the subsequent calendar year if the tax credit remains in effect.

D. The completed application form shall consist of the following information:

- (1) the applicant's name, mailing address, telephone number and taxpayer identification number;
- (2) the name of the applicant's authorized representative;
- (3) the ending date of the applicant's taxable year;
- (4) the address of the sustainable commercial or residential building or manufactured housing, or the address where the renovations were done including the applicable property's legal description;
- (5) whether the applicant was the building owner at time of certification or a subsequent purchaser;
- (6) the qualified occupied square footage of the sustainable residential or commercial building for projects eligible under LEED or build green New Mexico and for renovations of commercial buildings built at least ten years prior to the renovation and having at least 20,000 square feet;
- (7) the rating system under which the sustainable residential or commercial building was certified for projects eligible under LEED or build green New Mexico;
- (8) the certification level achieved, if applicable;
- (9) the energy rating system index, if applicable;
- (10) documentation applicant meets water efficiency standards to comply with water efficiency requirements of LEED and build green New Mexico programs;
- (11) the date of rating system certification, if applicable;

(12) project completion date;

(13) if applicable, the low-income taxpayer declaration confirming an applicant's annual household adjusted gross income is equal to or less than two hundred percent of the federal poverty level guidelines published by the United States department of health and human services;

(a) the annual update of the poverty guideline of the United States department of health and human services as published in the federal register shall be the basis for determining eligibility;

(b) the taxable year prior to the calendar year in which the energy-conserving products were purchased and installed shall be used to determine eligibility of the low-income taxpayer;

(14) if applicable, a statement from the building owner that the occupants of the commercial or residential building are low-income persons as defined in Paragraph (13) of Subsection D of 3.3.35.10 NMAC;

(15) a statement signed and dated by the applicant, which may be a form of electronic signature if approved by the department, certifying:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;

(b) applicant has read the requirements contained in 3.3.35 NMAC;

(c) if an onsite solar system is used to meet the requirements of either the rating system certification level applied for in the 2021 sustainable building tax credit or the energy reduction requirement achieved, the applicant did not claim a new solar market development income tax credit and will not do so;

(d) applicant understands there are annual caps for the 2021 sustainable building tax credit;

(e) applicant understands the department must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a 2021 sustainable building tax credit; and

(f) energy conservation products installed on or after January 1, 2021, may be certified for the 2021 sustainable building tax credit.

E. In addition to the application form, the application package shall consist of the following information provided as attachments:

(1) a copy of a deed, property tax bill or ground lease in the applicant's name as of or after the date of certification for the address or legal description of the sustainable building;

(2) a copy of the rating system certification form;

(3) a copy of the final certification review checklist showing the points achieved, if applicable;

(4) a copy of the energy rating index system certificate from an approved rating network or an equivalent rating system to the home energy rating system developed by RESNET showing the building has achieved the energy reduction requirements for build green New Mexico gold and emerald energy reduction levels;

(5) documentation showing compliance with the thirty and forty percent reduction requirements including:

(a) an analysis establishing the energy per square foot per year level that complies with the prescriptive path of the latest adopted residential energy code; the energy level established by meeting the energy code shall be compared to the energy consumption level of the final sustainable residential constructed design to demonstrate that the building consumes forty percent less energy or thirty percent less energy depending on the certification requested; and

(b) renewables can be used to meet

the forty or thirty percent energy requirements if calculation results show the annual energy contribution of renewables, in consistent units, of energy per square foot per year demonstrate the forty or thirty percent requirement is met; results from the national renewable energy laboratory PV calculator or equivalent evaluation systems shall be used to determine the annual energy output of photovoltaic systems;

(6) documentation showing a renovation of a commercial building having 20,000 square feet or more reduces total energy and power costs by fifty percent when compared to the most current energy standard for buildings titled energy standard for buildings except low-rise residential buildings, as developed by the American society of heating, refrigerating and air-conditioning engineers;

(7) documentation showing project completion date; and

(8) a copy of a notice of approval such as a certificate of occupancy from the building official for the renovation of a commercial building showing it was built at least 10 years prior to the project completion date.

F. The applicant shall provide the following attachments, as applicable;

(1) fully electric building certification;

(2) electric vehicle ready certification;

(3) broadband ready certification; and

(4) any other information the department determines it needs to review the building project for the 2021 sustainable building tax credit.
[3.3.35.10 NMAC – Rp, 3.3.35.10 NMAC, 07/12/2022]

3.3.35.11 APPLICATIONS FOR ENERGY-CONSERVING PRODUCTS:

A. Energy-conserving products shall be energy star rated for the location installed and meet the insulation requirements in 3.3.35.14

NMAC to be eligible for the 2021 sustainable building tax credit.

B. Energy-conserving products installed under the 2021 sustainable building tax credit shall reduce the energy consumption of a residential or commercial building with energy star windows and doors and insulation or contribute towards electrification of sustainable buildings with energy star heat pump furnaces and water heaters.

C. To obtain the 2021 sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the department using either a department-developed application form or approved electronic application system as directed by the division director. An applicant may obtain the department-developed application form or access to the electronic application system from the department.

D. An application package shall include a completed application form and attachments as specified on the application form or by the electronic application system. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application package for each project. The applicant shall submit all material in the application package on 8½ inch by 11-inch paper or using any approved electronic application system provided by the department as directed by the division director. If the applicant fails to submit the application form and required attachments as directed by the division director, the department may consider the application incomplete.

E. An applicant shall submit a complete application package to the department no later than February 1 of the year following the taxable year for which the applicant seeks the 2021 sustainable building tax credit. An applicant may submit an application for energy-conserving products installed in 2021 after February 1, 2022. The department may review application packages it receives after that date for the subsequent calendar year if the tax credit remains in effect.

F. The completed application form shall consist of the following information:

(1) the applicant's name, mailing address, telephone number, email address and taxpayer identification number;

(2) the name of the applicant's authorized representative, if any;

(3) the ending date of the applicant's taxable year;

(4) the address of the building where the energy-conserving products have been installed, including the property's legal description;

(5) if applicable, a low-income taxpayer declaration confirming annual household adjusted gross income equal to or less than two hundred percent of the federal poverty level guidelines published by the United States department of health and human services;

(a) the annual update of the poverty guideline of the United States department of health and human services as published in the federal register shall be the bases for determining eligibility;

(b) the taxable year prior to the calendar year in which the energy-conserving products were purchased and installed shall be used to determine eligibility of the low-income taxpayer;

(6) if applicable, a statement from the building owner certifying the occupants of the commercial or residential building are low-income persons and low-income persons, as defined in Paragraph (5) of Subsection F of 3.3.35.11 NMAC, continue to reside in the building;

(7) a statement signed and dated by the applicant, which may be a form of electronic signature if approved by the department, certifying:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;

(b) applicant has read the requirements contained in 3.3.35 NMAC;

(c) applicant understands there are annual caps for the 2021 sustainable building tax credit;

(d) applicant understands the department must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a 2021 sustainable building tax credit; and

(e) applicant understands the department issues a certificate of eligibility for the taxable year in which the energy-conserving products were installed; or if the 2021 sustainable building tax credit's annual cap has been reached, for the next taxable year in which funds are available;

(8) a statement verifying when the installation was complete; and

(9) a statement verifying that the application is for an affordable or non-affordable commercial or residential sustainable building tax credit.

G. The following attachments are required for applications for installation of energy star equipment:

(1) equipment specification sheet showing complete model number and copy of energy star certification for specific model of installed items;

(2) documentation that energy star certification is for the climate zone where the unit is installed;

(3) itemized invoice showing the quantity of product, cost of the energy-conserving product and cost for installation incurred within the tax year for which the application is submitted;

(4) proof of inspection and approval of installation; if applicable; and

(5) a copy of a deed, property tax bill or legal description of the building.

H. The following attachments are required for

applications for installation of insulation:

- (1) material specification sheet showing the R-value or U-value of insulation;
- (2) material flame spread index and smoke development index specifications;
- (3) a certification provided by the contractor showing the installed thickness of insulation following the manufacturer's installation instructions for blown-in or sprayed-on insulation;
- (4) itemized invoice showing quantity, product and installation costs of the insulation project;
- (5) proof of inspection and approval of installation; if applicable and
- (6) a copy of a deed, property tax bill or legal description of the building.

I. The following attachments are required for electric vehicle ready equipment:

- (1) a specification sheet for the electric vehicle charging unit; and
- (2) a one-line diagram showing the ampere and voltage rating of the dedicated branch circuit for each charging unit.

J. In addition to the foregoing, the applicant shall submit any other information the department determines it needs to review the building project for the 2021 sustainable building tax credit.

K. If the requirements established by the department have been complied with, the department shall issue to the building owner a document granting a 2021 sustainable building tax credit with an identification number, date of issuance, a calculation of the maximum amount of the 2021 sustainable building tax credit for which the building owner would be eligible and the first taxable year the credit shall be claimed.

L. To ensure compliance with 3.3.35 NMAC applicant agrees to allow the department or its authorized

representative to inspect the energy conservation product installation described in the application package at any time after the date of submittal of the application package until three years after the department has certified the energy conservation product installation, upon the department providing a minimum of five days' notice to the applicant. [3.3.35.11 NMAC – N, 07/12/2022]

3.3.35.12 APPLICATION REVIEW PROCESS:

A. The department considers applications in the order received, according to the day they are received, but not the time of day.

B. The department approves or disapproves an application package following the receipt of the complete application package. The department disapproves an incomplete or incorrect application. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The department places the resubmitted application in the review schedule as if it were a new application.

C. The department reviews the application package to calculate the maximum 2021 sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the 2021 sustainable building tax credit.

D. If an applicant has claimed a new solar market development income tax credit that solar system cannot be used to meet the requirements of either the certification level applied for, or the energy reduction achieved. If an applicant has received a new solar market development tax income credit for a system is used to meet the requirements of the certification level applied for or the energy reduction achieved, the department shall disapprove the application for the 2021 sustainable building tax credit. The applicant may submit a revised

application package to the department that does not include the electricity projected to be generated by the solar system. The department places the resubmitted application in the review schedule as if it were a new application.

E. If the department finds the application package meets the requirements and a 2021 sustainable building tax credit is available, the department issues the certificate of eligibility for a 2021 sustainable building tax credit as provided in 3.3.35.8 NMAC. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building, a calculation of the maximum amount of 2021 sustainable building tax credit for which the owner would be eligible, date of issuance and the first and any subsequent taxable year(s) the credit shall be claimed.

F. If the department finds the application package for energy conservation products meets the requirements and a 2021 sustainable building tax credit is available, the department issues the certificate of eligibility for a 2021 sustainable building tax credit as provided in 3.3.35.8 NMAC. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, energy-conserving product certified, a calculation of the maximum amount of 2021 sustainable building tax credit for which the owner would be eligible, date of issuance and the first and any subsequent taxable year(s) the credit shall be claimed.

G. The certificate shall state the energy conservation product that is certified and that the certificate is for an affordable or non-affordable sustainable building project. [3.3.35.12 NMAC - Rp, 3.3.35.11 NMAC, 07/12/2022]

3.3.35.13 CALCULATING THE TAX CREDIT FOR THE 2021 SUSTAINABLE BUILDING TAX**CREDIT:**

A. The department calculates the maximum 2021 sustainable building tax credit based on the qualified occupied square footage of the sustainable building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below.

Sustainable commercial building that is broadband ready and electric vehicle ready and is completed after January 1, 2022:	
LEED-NC platinum first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by \$5.25
LEED-NC platinum next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by \$2.25
LEED-NC platinum over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by \$1.00
LEED-EB (O&M) or CS platinum first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by \$3.40
LEED-EB (O&M) or CS platinum next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by \$1.30
LEED-EB (O&M) or CS platinum over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by \$0.35
LEED-CI platinum first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by \$1.50
LEED-CI platinum next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by \$0.40
LEED-CI platinum over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by \$0.30
LEED-NC gold first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by \$3.00
LEED-NC gold next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by \$1.00
LEED-NC gold over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by \$0.25
LEED-EB (O&M) or CS gold first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by \$2.00
LEED-EB (O&M) or CS gold next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by \$1.00
LEED-EB (O&M) or CS gold over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by \$0.25
LEED-CI gold first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by \$0.90
LEED-CI gold next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by \$0.40
LEED-CI gold over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by \$0.10
Additional criteria	
fully electric buildings first 50,000 square feet	equals the qualified square footage up to 50,000 multiplied by \$1.00
fully electric buildings over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by \$0.50

zero carbon, energy, waste or water certified first 50,000 square feet	equals the qualified square footage up to 50,000 multiplied by \$0.25
zero carbon, energy, waste or water certified over 50,000 square feet up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by \$0.10
Renovation of commercial building at least 10 years old with at least 20,000 square feet of qualified occupied square footage in which temperature is controlled and is broadband and electric vehicle ready effective January 1, 2021:	
renovation that reduces total energy consumption by 50% when compared to the most current energy standard for buildings except low-rise residential buildings as developed by American society of heating, refrigerating and air-conditioning engineers	equals qualified square footage multiplied by \$2.25 up to a maximum of \$150,000 per renovation

For the installation of these energy conserving products for renovation of sustainable affordable and non-affordable commercial buildings less than 20,000 square feet of space in which temperature is controlled and is broadband ready effective January 1, 2021:

Product	affordable housing	non-affordable housing
energy star air source heat pump	\$2,000 including product and installation costs and associated electrical connection costs	\$1,000 including product and installation costs and associated electrical connection costs
energy star ground source heat pump	\$2,000 including product and installation costs and associated electrical connection costs	\$1,000 including product and installation costs per product installed and associated electrical connection costs
energy star windows and doors	one hundred percent of product and installation costs up to \$1,000	fifty percent of product and installation costs up to \$500 per product installed
insulation improvements that meet department's rules	one hundred percent of product and installation costs up to \$2,000	fifty percent of product and installation costs up to \$1,000 per product installed
energy star heat pump water heater	\$700 including product and installation costs and associated electrical connection costs	\$350 including product and installation costs per product installed and associated electrical connection costs
electric vehicle ready	one hundred percent of product and installation costs up to \$3,000 and associated electrical connection costs	fifty percent of product and installation costs up to \$1,500 per product installed and associated electrical connection costs

For construction of a new sustainable residential building that is broadband ready and electric vehicle ready and completed after January 1, 2022:

LEED-H platinum	equals the qualified square footage up to 2,000 multiplied by \$5.50
LEED-H gold	equals the qualified square footage up to 2,000 multiplied by \$3.80
build green emerald	equals the qualified square footage up to 2,000 multiplied by \$5.50

build green gold	equals the qualified square footage up to 2,000 multiplied by \$3.80
manufactured housing	equals the qualified square footage up to 2,000 multiplied by \$2.00
Additional criteria	
fully electric building	equals the qualified square footage up to 2,000 multiplied by \$1.00
zero carbon, energy, waste or water certified	equals the qualified square footage up to 2,000 multiplied by \$0.25

For installation of energy conserving products for renovation of affordable and non-affordable existing residential buildings effective January 1, 2021:		
Product	affordable housing and low income	non-affordable housing and non-low income
energy star air source heat pump	\$2,000 including product and installation costs (per product installed if the applicant is a low-income taxpayer)	\$1,000 including product and installation costs per product installed
energy star ground source heat pump	\$2,000 including product and installation costs (per product installed if the applicant is a low-income taxpayer)	\$1,000 including product and installation costs per product installed
energy star windows and doors	one hundred percent of product and installation costs up to \$1,000 (per product installed if the applicant is a low-income taxpayer)	fifty percent of product and installation costs up to \$500 per product installed
insulation improvements that meet department's rules	one hundred percent of product and installation costs up to \$2,000 (per product installed if the applicant is a low-income taxpayer)	fifty percent of product and installation costs up to \$1,000 per product installed
energy star heat pump water heaters	\$700 including product and installation costs (per product installed if the applicant is a low-income taxpayer)	\$350 including product and installation costs per product installed
electric vehicle ready	\$1,000 including product and installation costs (per product installed if the applicant is a low-income taxpayer)	\$500 including product and installations costs per product installed

B. Energy conservation products shall meet the specified energy star rating performance requirements at the installed location.

energy star zones for New Mexico	
south-central zone	Chavez, Dona Ana, Eddy, Hidalgo, Lea, Luna and Otero counties
north-central zone	Bernalillo, Cibola, Curry, De Baca, Grant, Guadalupe, Lincoln, Quay, Roosevelt, Sierra, Socorro, Union and Valencia counties
northern	Catron, Colfax, Harding, Los Alamos, McKinley, Mora, Rio Arriba, San Juan, San Miguel, Sandoval, Santa Fe, Taos and Torrance counties

3.3.35.14 REQUIREMENTS FOR ENERGY CONSERVING PRODUCTS:

A. Energy-conserving products shall be energy star rated for the location installed and meet the insulation requirements in 3.3.35.14 NMAC to be eligible for the 2021 sustainable building tax credit. Energy conserving products and insulation improvements eligible for the 2021 sustainable building tax credit shall meet the applicable requirements of the most current New Mexico commercial building code, the New Mexico residential building code, the New Mexico electrical code, the New Mexico mechanical code and the New Mexico plumbing code and shall be installed under a construction permit and shall be inspected by the code official having jurisdiction.

B. Insulation products and installation eligible for consideration for a tax credit are

(1) batts and blankets made of mineral fiber and mineral wool such as fiberglass, rock, slag, wool, cotton or cellulose materials; they are available with facings that serve as vapor retarders and without facings; some products have flanges to aid in installation to framed assemblies;

(2) loose-fill insulation that uses a blown installation process for cellulose, fiberglass, mineral wool and natural wools; the R-value of the blown wall insulation material installed in closed cavities is determined by the installed thickness and density; the installed density shall meet manufactured specifications; open horizontal applications, such as for attic and floors, the R-value is verified by thickness and rated coverage; in open vertical applications the R-value shall be thickness and rated coverage as per manufacture specifications;

(3) spray polyurethane foam having an open cellular structure having a nominal density of 0.4 to 1.5 pounds per cubic foot shall have a minimum R-value of 3.6 per inch

for compliance; a spray applied polyurethane foam having a closed cellular structure having a nominal density of 1.5 to less than 2.5 pounds per cubic foot shall have a minimum R-value of 5.8 per inch for compliance; the weatherproof seal placed on top of spray polyurethane foam shall protect from degradation caused by ultraviolet light, water and other normal weathering hazards; surfaces to receive the roof covering system must comply with applicable building codes and manufacturers installation recommendations;

(4) rigid insulation sheathing made from fiberglass, mineral wool, expanded polystyrene, extruded polystyrene, polyisocyanurate or polyurethane; this type of insulation may be used for roof decks, exterior walls, ceilings, basement walls, perimeter insulation or to cover window and door headers; fastening shall follow manufacturer requirements;

(5) wet insulation systems are roofing systems where insulation is installed above the waterproof membrane of a roof; installation shall meet New Mexico building code water sealing requirements;

(6) structural form wall systems made of closed cell spray foam placed in the cavity bonded to wood framing and continuous rigid board insulation on the exterior of the frame;

(7) structural insulated panels that are non-framed advanced construction system that consists of ridged foam insulation sandwiched between two sheets of board; the insulation can be expanded polystyrene foam, extruded polystyrene foam, polyurethane or polyisocyanurate foam; and

(8) insulated concrete forms (ICF) that are a system of formwork for concrete that stays in place as permanent building insulation and can be used for cast-in-place reinforced above-and below-grade concrete walls, floors and roofs; they are interlocking modular units that can be dry stacked (without mortar) and filled with concrete as a

single concrete masonry unit; ICFs lock together externally and have internal metal or plastic ties to hold the outer layers of insulation to create a concrete form.

C. Eligible insulation installations shall to the extent possible, without structural framing modification, be installed in the building cavity to the R-factor listed in the prescriptive method of the latest New Mexico energy conservation code adopted by the construction industries division of the regulation and licensing department for the applicable building cavity and construction site climate zone. In no instance shall an increase in insulating R-factor less than 10 be considered for the 2021 sustainable building tax credit. Reframing involving basic structural framing of a building is not required.

D. Mandatory requirements for insulation products.

(1) R-value identification marks shall be applied by the manufacturer to each piece of insulation 12 inches or wider. Alternatively, the insulation installer shall provide a certification listing the type, manufacturer and R-value of the insulation install in each element of the building thermal envelope.

(2) For blown in or sprayed fiberglass and cellulose insulation, the initial installed thickness, settled thickness, settled R value, installed density, coverage area and number of bags installed shall be listed on the certification.

(3) For sprayed polyurethane foam insulation, the installed thickness shall be listed on the certification. The thickness of sprayed insulation shall be marked in inches and markers showing the thickness shall be installed every 300 square feet and attached to trusses or joists in attics. The numbers in the markers shall be at least one inch high and visible from the attic access opening.

(4) Fire rating of products shall follow the New Mexico commercial building code and New Mexico residential code.

(5) Foam plastic insulation shall be tested to demonstrate a flame-spread index of not more than 75 and a smoke-developed index of not more than 450.

(6) Exposed facing on insulation materials shall be fire resistant and tested and certified not to exceed a flame spread index of 25 and a smoke development index of 450. These indexes shall be shown on the insulation or packaging material or supplied by the manufacturer.

(7) Exposed foundation insulation shall have a protective rigid, opaque and weather-resistant protective covering to prevent the degradation of the insulation.

(8) Slab insulation must be suitable for applications in direct contact with soil and have a water absorption rate less than 0.3 percent when tested and a vapor permeance not greater than 2.0 perm/inch when tested.

(9) All insulation shall be properly sealed to prevent air leakage.

(10) To qualify for the 2021 sustainable building tax credit, insulation products installed shall meet the most current New Mexico energy code insulation requirements adopted by the construction industries division of the regulation and licensing department.

E. Retrofits with the following construction material or methods are not eligible for the 2021 sustainable building tax credit:

(1) logs, strawbales, adobe and rammed earth;

(2) spray-in-place polyurethane foam for interior walls or ceilings;

(3) urea formaldehyde foam insulation; and

(4) passive solar technologies using direct gain, trombe walls or mass energy storage.

F. The following are mandatory requirements for fenestration products.

(1) Fenestration products shall meet energy star requirements.

(2) The temporary label on windows shall not be removed until after inspection by the code official.

(3) All fenestration products shall be properly sealed to prevent air leakage.

G. Windows and skylights.

(1) Windows are considered part of an exterior wall when the slope is 60 degrees or more as measured from the horizontal. Where the slope of the fenestration is less than 60 degrees, the glazing is considered a skylight. Skylights are not eligible for the 2021 sustainable building tax credit.

(2) Site built fenestration or field-fabricated fenestration are not eligible for the 2021 sustainable building tax credit.

H. To qualify for an electric vehicle ready 2021 sustainable building tax credit, a commercial building shall have at least ten percent of parking spaces and for residential buildings at least one parking space with one 40 ampere, 208 volt or 240 volt dedicated branch circuit for charging electric vehicles. The termination point can be a receptacle or junction box and shall be near where electric vehicles can easily be charged. The extension cord shall be long enough to reach a vehicle and meet code and electric vehicle manufacturing requirements. [3.3.35.14 NMAC - N, 07/12/2022]

3.3.35.15 CLAIMING THE STATE TAX CREDIT: To claim the 2021 sustainable building tax credit, an applicant shall submit all certificates of eligibility to the taxation and revenue department within 30 days of the department's issuance, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department may require. [3.3.35.15 NMAC - Rp, 3.3.35.14 NMAC, 07/12/2022]

HISTORY OF 3.3.35 NMAC:
3.3.35 NMAC - New Sustainable

Building Tax Credit For Commercial Buildings, filed 12/30/2015 was repealed and replaced by 3.3.35 NMAC - 2021 Sustainable Building Tax Credit, effective 07/12/2022.

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT ENERGY CONSERVATION AND MANAGEMENT DIVISION

TITLE 3 TAXATION CHAPTER 4 CORPORATE INCOME TAXES PART 22 2021 SUSTAINABLE BUILDING TAX CREDIT

3.4.22.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department. [3.4.22.1 NMAC - Rp, 3.4.22.1 NMAC, 07/12/2022]

3.4.22.2 SCOPE: 3.4.22 NMAC applies to the application and certification procedures for administration of the 2021 sustainable building tax credit for sustainable residential buildings, sustainable commercial buildings, the permanent installation of manufactured housing or the installation of energy-conserving products to existing buildings. [3.4.22.2 NMAC - Rp, 3.4.22.2 NMAC, 07/12/2022]

3.4.22.3 STATUTORY AUTHORITY: 3.4.22 NMAC is established under the authority of Section 7-2A-28.1 and Subsection E of 9-1-5 NMSA 1978. [3.4.22.3 NMAC - Rp, 3.4.22.3 NMAC, 07/12/2022]

3.4.22.4 DURATION: Permanent unless an earlier date is specified in a section. [3.4.22.4 NMAC - Rp, 3.4.22.4 NMAC, 07/12/2022]

3.4.22.5 EFFECTIVE DATE: July 12, 2022, unless a later

date is cited at the end of a section.
[3.4.22.5 NMAC - Rp, 3.4.22.5
NMAC, 07/12/2022]

3.4.22.6 OBJECTIVE:

3.4.22 NMAC's objective is to establish procedures for administering the program to issue a certificate of eligibility for the 2021 sustainable building tax credit for sustainable residential and commercial buildings, permanent installation of manufactured housing, renovation of existing buildings or the installation of energy-conserving products to existing buildings.

[3.4.22.6 NMAC - Rp, 3.4.22.6
NMAC, 07/12/2022]

3.4.22.7 DEFINITIONS:

For additional definitions refer to Section 7-2A-28.1, NMSA 1978.

A. "Annual cap"

means the annual total amount of the 2021 sustainable building tax credit available to taxpayers owning sustainable buildings.

B. "Applicant" means

a taxpayer who owns a sustainable residential or commercial building or manufactured housing or who has renovated an existing building or installed energy-conserving products in New Mexico and who desires to have the department issue a certificate of eligibility for a 2021 sustainable building tax credit.

C. "Application

package" means the documents an applicant submits to the department to apply for a certificate of eligibility for a 2021 sustainable building tax credit.

D. "Build green New

Mexico certification" means the verification by a department-approved verifier that a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.

E. "Build green

New Mexico rating system" means the certification standards adopted by build green New Mexico in November 2014, which includes water conservation standards.

F. "Building project"

means a new construction of a sustainable commercial or residential building, installation of manufactured housing, renovation of an existing building or installation of energy-conserving products to existing buildings.

G. "Building type"

means the primary use of a building or section of a building as defined in target finder.

H. "Certificate of

eligibility" means the document with a unique identifying number that specifies the specific physical address for the approved 2021 sustainable building tax credit, the rating system certification level awarded to the building, the amount of qualified occupied square footage, a calculation of the maximum amount of the 2021 sustainable building tax credit for which the owner would be eligible, the date of issuance and the first taxable year the credit shall be claimed.

I. "Certification

level" means one of the following:

- (1) LEED-H gold or build green New Mexico gold;
- (2) LEED-H platinum or build green New Mexico emerald;
- (3) LEED-NC gold;
- (4) LEED-NC platinum;
- (5) LEED-EB (O&M) or LEED-CS gold;
- (6) LEED-EB (O&M) or LEED-CS platinum;
- (7) LEED-CI gold or LEED-CI platinum; and
- (8) manufactured housing.

J. "Code official"

means the officer or other designated authority charged with the administration and enforcement of the building codes.

K. "Department"

means the energy, minerals and natural resources department.

L. "Division director"

means the director of the department's energy conservation and management division.

M. "Insulation" is

a material that contains properties to significantly control heat flow caused by radiation, convection and conduction. It is essential for controlling heat gain and loss through the building enclosure. Insulation is rated by R-value, the material's resistance to heat flow.

N. "Install" or

"installation" means the direct work of placing an energy conservation product into service to operate and reduce energy at the expected level for window, doors and insulation and contribute to electrification of commercial and residential buildings with energy star rated equipment.

O. "LEED

certification" means the verification by the United States green building council, or a department-approved verifier, that a building project has met certain prerequisites and performance benchmarks or credits within the applicable LEED rating system resulting in the issuance of a certification document.

P. "LEED

registration" means the notification to the United States green building council that a project is pursuing LEED certification.

Q. "Most current"

means the most recent date of the latest approved edition of a standard LEED rating system or the most recent date of an approved energy code adopted by the construction industries division of the regulation and licensing department.

R. "O&M" means

operation and maintenance.

S. "2021 sustainable

building tax credit" for the purposes of 3.4.22 NMAC means the corporate income tax credit the state of New Mexico issues to an applicant for a sustainable residential or commercial building, manufactured home, renovation of an existing building or installation of energy-conserving products.

T. "New solar market

development income tax credit" means the tax credit enacted in 2020 issued to a taxpayer for a solar energy system the department has certified.

U. “Notice of approval” means the work complies in all respects with the latest building codes and has been approved by the code official.

V. “Project completion” means notice of approval by code officials for construction or renovation projects. New buildings must be completed after January 1, 2022. Renovation of existing buildings or installation of energy conserving products must be completed after January 1, 2021.

W. “Rating system” means the LEED rating systems previously defined, the build green New Mexico rating system or the energy star program for manufactured housing.

X. “RESNET” means the residential energy services network, an industry not-for-profit membership corporation and national standards-making body for building energy efficiency rating systems.

Y. “Sustainable affordable buildings” means housing that serves the needs of low-income persons with an annual household adjusted gross income equal to or less than two hundred percent of the federal poverty level guidelines published by the United States department of health and human services.

Z. “Target finder” means the web-based program developed by the United States environmental protection agency to establish an energy goal in kilo british thermal units per square foot per year for predetermined building types.

AA. “Taxable year” means the calendar year or fiscal year upon the basis of which the net income is computed under the Corporate Income and Franchise Tax Act, 7-2A-1 *et seq.* NMSA 1978.

BB. “Taxpayer” means any individual subject to the tax imposed by the Corporate Income and Franchise Tax Act, 7-2A-1 *et seq.* NMSA 1978.

CC. “Taxpayer identification number” means the taxpayer’s nine-digit social security number or employer identification

number provided by a business enterprise.

DD. “Verifier” means an entity the department approves to provide certifications under the build green New Mexico or LEED rating systems.

[3.4.22.7 NMAC - Rp, 3.4.22.7 NMAC, 07/12/2022]

3.4.22.8 GENERAL PROVISIONS:

A. The 2021 sustainable building tax credit may be claimed for taxable years prior to January 1, 2028.

B. A tax credit provided in 3.4.22.8 NMAC may not be claimed with respect to the same sustainable building under the 2021 sustainable building tax credit provided in the Income Tax Act, for which a credit under the 2015 sustainable building tax credit pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act has already been claimed.

C. A person who is the owner of a building in New Mexico constructed to be a sustainable building or permanently installed manufactured housing and receives certification on or after January 1, 2022, may receive a certificate of eligibility for a sustainable building tax credit. A subsequent purchaser of a sustainable residential building may receive a certificate if no tax credit has previously been claimed for the building.

D. A person who is the owner of a commercial building having more than 20,000 square feet of temperature-controlled space and was built at least 10 years prior to the renovation or a building owner who has installed energy conservation products in an existing commercial or residential building having less than 20,000 square feet of temperature-controlled space on or after January 1, 2021, may receive a certificate of eligibility for a 2021 sustainable building tax credit.

E. The annual total amounts in a calendar year of the 2021 sustainable building tax credit pursuant to the Income Tax Act and

Corporate Income and Franchise Tax Act available to taxpayers owning sustainable residential buildings is \$2,000,000, for sustainable commercial buildings is \$1,000,000 and for sustainable manufactured housing is \$250,000. Any excess funds not used in a taxable year shall not be carried forward to subsequent years. When the cap is reached in any category in a given year based on all certificates of eligibility the department has issued, the department shall:

(1) if part of the eligible 2021 sustainable building tax credit is within the annual cap and part is over the annual cap, issue a certificate of eligibility for the amount under the annual cap for the applicable tax year and issue a certificate of eligibility for the balance in a subsequent tax year, except for the last taxable year when the 2021 sustainable building tax credit is in effect;

(2) issue certificates of eligibility to applicants who meet the requirements for the 2021 sustainable building tax credit in a taxable year when applications in one sustainable building category exceed the annual cap in another sustainable building category and other categories are under the annual cap as determined by February 1 of any year in which the tax credit is in effect; or

(3) if no 2021 sustainable building tax credit funds are available, issue a certificate of eligibility for the next subsequent tax year in which funds are available, except for the last taxable year when the 2021 sustainable building tax credit is in effect.

F. Funding for renovation of commercial buildings is \$1,000,000 and for energy conservation products \$2,900,000.

G. In the event of a discrepancy between a requirement of 3.4.22 NMAC and an existing New Mexico taxation and revenue department rule promulgated before 3.4.22 NMAC’s adoption, the existing rule governs.

H. All notices and applications required to be submitted to the department under 3.4.22 NMAC shall be submitted to the energy conservation and management division of the department.

I. New Mexico general requirements.

(1) Sustainable buildings shall have the internet connections capable of connecting to a broadband provider.

(2) New sustainable residential buildings shall be electric vehicle ready. The parking space shall be equipped with one 40 ampere, 208 volt or 240 volt dedicated branch circuit for charging electric vehicles. The termination point can be a receptacle or junction box and shall be near where electric vehicles can easily be charged. The extension cord shall be long enough to reach to a vehicle and meet electric code and electric vehicle manufacturing requirements.

(3) New sustainable commercial buildings shall be electric vehicle ready with at least ten percent of the parking spaces capable of charging electric vehicles and for residential buildings at least one parking space. All parking spaces required to be capable of charging electric vehicles shall be equipped with one 40 ampere, 208 volt or 240 dedicated branch circuit for charging electric vehicles. The termination point can be a receptacle or junction box and shall be near where electric vehicles can easily be charged. The extension cord shall be long enough to reach to a vehicle and meet electric code and electric vehicle manufacturing requirements.

(4) A fully electric new building shall have a permanent supply of only electricity for space heating, water heating, cooking appliances, clothes washing, clothes drying, dish washing, pools and spas. No natural gas or propane plumbing shall be installed. This is only required to obtain the 2021 sustainable building tax credit for fully electric new buildings.

(5) A fully electric existing building shall

have a permanent supply of only electricity for space heating, water heating, cooking appliances, clothes washing, clothes drying, pools and spas. The existing building shall not be connected to natural gas or propane energy supplies. Existing natural gas or propane plumbing does not need to be removed for purpose of this provision, so long as it is disconnected. This is only required to obtain the 2021 sustainable building tax credit for fully electric new buildings.

(6) Sustainable building projects shall follow the latest LEED rating system requirements as established by the United States green building council or the latest build green New Mexico requirements.

J. Build green New Mexico sustainable single-family residential requirements.

(1) Build green emerald shall:

(a) comply with watersense standards for indoor plumbing fixtures and water using appliances that, on average, have flow rates equal to or lower than the flow rates required for certification;

(b) include one waterline in the front and one waterline in the back, below the frost line, that can be connected to a drip irrigation system if landscaping area is available; and

(c) use forty percent less energy than is required by following the prescriptive path of the most current residential energy conservation code adopted by the construction industries division of the regulation and licensing department.

(2) Build green gold shall:

(a) comply with watersense standards for indoor plumbing fixtures and water using appliances that, on average, have flow rates equal to or lower than the flow rates required for certification;

(b) include one waterline in the front and

one waterline in the back, below the frost line, that can be connected to a drip irrigation system if landscaping area is available; and

(c) use thirty percent less energy than is required by following the prescriptive path of the most current residential energy conservation code adopted by the construction industries division of the regulation and licensing department.

(3) Build green New Mexico shall use department approved verifiers to determine a building project has met certain prerequisites and performance benchmarks or credits within each category of the build green New Mexico rating system resulting in the issuance of a certification document.

K. Net zero homes shall be determined using an energy rating system index that gives a numerical score to a building where 100 represents the energy use of a home relative to the 2006 International Energy Conservation Code and 0 is equivalent to a net zero home.

[3.4.22.8 NMAC - Rp, 3.4.22.8 NMAC, 07/12/2022]

3.4.22.9 VERIFIER ELIGIBILITY FOR ALL BUILDINGS:

A. The department reviews the qualifications for verifiers of the build green New Mexico or LEED-H certifications or LEED commercial buildings, which shall be provided annually to the department, based on the following criteria:

(1) the verifier is independent from the homebuilders or homeowners or commercial building owners that may apply for certification;

(2) the verifier has adequate staff and expertise to provide certification services, including:

(a) experience in green home building and commercial building services;

(b) ability to enlist and serve builders and provide training, consulting and other guidance as necessary;

(c) a method of auditing the certification process to maintain adequate stringency; and

(d) ability to administer the program and report on the certifications, audits and other relevant information the department may request;

(3) the verifier can identify the geographic area being served; and

(4) the verifier provides a statement that expresses a commitment to promoting energy-efficient green building with the highest standard of excellence.

B. The department approves verifiers after an entity submits a written request to the department that includes documentation on how the entity meets the required criteria. The department notifies the entity of the reasons for disapproving eligibility.

C. The verifier shall notify the department 30 calendar days prior to making any changes to its certification process or rating systems on which its prior approval by the department was based.

D. The department may rescind an existing verifier's approval at any time if it determines the above criteria are not being met.

E. The department notifies the verifier of the reasons for disapproving or rescinding eligibility as follows.

(1) The department shall notify the verifier of the proposed rescission in writing. The verifier has the right to request in writing review of the decision to rescind the verifier's approval. The verifier shall file a request for review within 20 calendar days after the department's notice is sent. The verifier shall address the request to the division director and include the reasons the department should not rescind the verifier's approval. The director shall consider the request. The division director may hold, at his or her discretion, a hearing and appoint a hearing officer to conduct the hearing. The division director shall send a final decision to the

verifier on the latter of 20 calendar days after receiving the request or five calendar days after a hearing is held.

(2) The verifier may appeal in writing to the department's secretary a division director's decision. The notice of appeal shall include the reasons that the secretary should overturn the division director's decision. The secretary shall consider any appeal from a division director's decision. The verifier shall file the appeal and the reasons for the appeal with the secretary within 14 calendar days of the division director's issuance of the decision. The secretary may hold a hearing, at his or her sole discretion, and appoint a hearing officer to conduct the hearing. The secretary shall send a final decision to the verifier within the latter of 20 calendar days after receiving the request or five calendar days after the date the hearing concludes.

[3.4.22.9 NMAC – Rp, 3.4.22.9 NMAC, 07/12/2022]

3.4.22.10 APPLICATION FOR THE 2021 SUSTAINABLE BUILDING TAX CREDIT:

A. To obtain the 2021 sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the department using either a department-developed application form or approved electronic application system as directed by the division director. An applicant may obtain the department-developed application form or access to the electronic application system from the department.

B. An application package shall include a completed application form and attachments as specified on the application form or by the electronic application system. The applicant shall submit the application form and required attachments at the same time. An applicant shall submit one application package for each sustainable residential or commercial building or manufactured house. An applicant for a multiuse building shall submit one residential application and one commercial application. The

applicant shall submit all material in the application package on 8½ inch by 11-inch paper or using any approved electronic application system provided by the department as directed by the division director. If the applicant fails to submit the application form and required attachments at the same time as directed by the division director, the department may consider the application incomplete.

C. An applicant shall submit a complete sustainable building application package to the department no later than February 1 of the taxable year for which the applicant seeks the 2021 sustainable building tax credit. If an applicant does not submit a complete application package by February 1, any remaining funds in any other sustainable building category in the 2021 sustainable building tax credit funds, under the cap, may be used in that taxable year for completed 2021 sustainable building or manufactured housing applications. The department may review application packages it receives after that date for the subsequent calendar year if the tax credit remains in effect.

D. The completed application form shall consist of the following information:

- (1) the applicant's name, mailing address, telephone number and taxpayer identification number;
- (2) the name of the applicant's authorized representative;
- (3) the ending date of the applicant's taxable year;
- (4) the address of the sustainable commercial or residential building or manufactured housing, or the address where the renovations were done including the applicable property's legal description;
- (5) whether the applicant was the building owner at time of certification or a subsequent purchaser;
- (6) the qualified occupied square footage of the sustainable residential or

commercial building for projects eligible under LEED or build green New Mexico and for renovations of commercial buildings built at least ten years prior to the renovation and having at least 20,000 square feet;

(7) the rating system under which the sustainable residential or commercial building was certified for projects eligible under LEED or build green New Mexico;

(8) the certification level achieved, if applicable;

(9) the energy rating system index, if applicable;

(10) documentation applicant meets water efficiency standards to comply with water efficiency requirements of LEED and build green New Mexico programs;

(11) the date of rating system certification, if applicable;

(12) project completion date;

(13) if applicable, the low-income taxpayer declaration confirming an applicant's annual household adjusted gross income is equal to or less than two hundred percent of the federal poverty level guidelines published by the United States department of health and human services;

(a) the annual update of the poverty guideline of the United States department of health and human services as published in the federal register shall be the basis for determining eligibility;

(b) the taxable year prior to the calendar year in which the energy-conserving products were purchased and installed shall be used to determine eligibility of the low-income taxpayer;

(14) if applicable, a statement from the building owner that the occupants of the commercial or residential building are low-income persons as defined in Paragraph (13) of Subsection D of 3.4.22.10 NMAC;

(15) a statement signed and dated by the applicant, which may be a form of electronic signature if approved by the department, certifying:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;

(b) applicant has read the requirements contained in 3.4.22 NMAC;

(c) if an onsite solar system is used to meet the requirements of either the rating system certification level applied for in the 2021 sustainable building tax credit or the energy reduction requirement achieved, the applicant did not claim a new solar market development income tax credit and will not do so;

(d) applicant understands there are annual caps for the 2021 sustainable building tax credit;

(e) applicant understands the department must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a 2021 sustainable building tax credit; and

(f) energy conservation products installed on or after January 1, 2021, may be certified for the 2021 sustainable building tax credit.

E. In addition to the application form, the application package shall consist of the following information provided as attachments:

(1) a copy of a deed, property tax bill or ground lease in the applicant's name as of or after the date of certification for the address or legal description of the sustainable building;

(2) a copy of the rating system certification form;

(3) a copy of the final certification review checklist showing the points achieved, if applicable;

(4) a copy of the energy rating index system certificate from an approved rating

network or an equivalent rating system to the home energy rating system developed by RESNET showing the building has achieved the energy reduction requirements for build green New Mexico gold and emerald energy reduction levels;

(5) documentation showing compliance with the thirty and forty percent reduction requirements including:

(a) an analysis establishing the energy per square foot per year level that complies with the prescriptive path of the latest adopted residential energy code; the energy level established by meeting the energy code shall be compared to the energy consumption level of the final sustainable residential constructed design to demonstrate that the building consumes forty percent less energy or thirty percent less energy depending on the certification requested; and

(b) renewables can be used to meet the forty or thirty percent energy requirements if calculation results show the annual energy contribution of renewables, in consistent units, of energy per square foot per year demonstrate the forty or thirty percent requirement is met; results from the national renewable energy laboratory PV calculator or equivalent evaluation systems shall be used to determine the annual energy output of photovoltaic systems;

(6) documentation showing a renovation of a commercial building having 20,000 square feet or more reduces total energy and power costs by fifty percent when compared to the most current energy standard for buildings titled energy standard for buildings except low-rise residential buildings, as developed by the American society of heating, refrigerating and air-conditioning engineers;

(7) documentation showing project completion date; and

(8) a copy of a notice of approval such as a certificate of occupancy from the building official for the renovation

of a commercial building showing it was built at least 10 years prior to the project completion date.

F. The applicant shall provide the following attachments, as applicable;

- (1) fully electric building certification;
- (2) electric vehicle ready certification;
- (3) broadband ready certification; and
- (4) any other information the department determines it needs to review the building project for the 2021 sustainable building tax credit. [3.4.22.10 NMAC – Rp, 3.4.22.10 NMAC, 07/12/2022]

3.4.22.11 APPLICATIONS FOR ENERGY-CONSERVING PRODUCTS:

A. Energy-conserving products shall be energy star rated for the location installed and meet the insulation requirements in 3.4.22.14 NMAC to be eligible for the 2021 sustainable building tax credit.

B. Energy-conserving products installed under the 2021 sustainable building tax credit shall reduce the energy consumption of a residential or commercial building with energy star windows and doors and insulation or contribute towards electrification of sustainable buildings with energy star heat pump furnaces and water heaters.

C. To obtain the 2021 sustainable building tax credit, a taxpayer shall apply for a certificate of eligibility with the department using either a department-developed application form or approved electronic application system as directed by the division director. An applicant may obtain the department-developed application form or access to the electronic application system from the department.

D. An application package shall include a completed application form and attachments as specified on the application form or by the electronic application system. The applicant shall submit the application form and required

attachments at the same time. An applicant shall submit one application package for each project. The applicant shall submit all material in the application package on 8½ inch by 11-inch paper or using any approved electronic application system provided by the department as directed by the division director. If the applicant fails to submit the application form and required attachments as directed by the division director, the department may consider the application incomplete.

E. An applicant shall submit a complete application package to the department no later than February 1 of the year following the taxable year for which the applicant seeks the 2021 sustainable building tax credit. An applicant may submit an application for energy-conserving products installed in 2021 after February 1, 2022. The department may review application packages it receives after that date for the subsequent calendar year if the tax credit remains in effect.

F. The completed application form shall consist of the following information:

- (1) the applicant's name, mailing address, telephone number, email address and taxpayer identification number;
- (2) the name of the applicant's authorized representative, if any;
- (3) the ending date of the applicant's taxable year;
- (4) the address of the building where the energy conserving products have been installed, including the property's legal description;
- (5) if applicable, a low-income taxpayer declaration confirming annual household adjusted gross income equal to or less than two hundred percent of the federal poverty level guidelines published by the United States department of health and human services;
- (a) the annual update of the poverty guideline of the United States department of health and human

services as published in the federal register shall be the bases for determining eligibility;

(b) the taxable year prior to the calendar year in which the energy-conserving products were purchased and installed shall be used to determine eligibility of the low-income taxpayer;

(6) if applicable, a statement from the building owner certifying the occupants of the commercial or residential building are low-income persons and low-income persons, as defined in Paragraph (5) of Subsection F of 3.4.22.11 NMAC, continue to reside in the building;

(7) a statement signed and dated by the applicant, which may be a form of electronic signature if approved by the department, certifying:

(a) all information provided in the application package is true and correct to the best of the applicant's knowledge under penalty of perjury;

(b) applicant has read the requirements contained in 3.4.22 NMAC;

(c) applicant understands there are annual caps for the 2021 sustainable building tax credit;

(d) applicant understands the department must verify the documentation submitted in the application package before the department issues a certificate of eligibility for a 2021 sustainable building tax credit; and

(e) applicant understands the department issues a certificate of eligibility for the taxable year in which the energy-conserving products were installed; or if the 2021 sustainable building tax credit's annual cap has been reached, for the next taxable year in which funds are available;

(8) a statement verifying when the installation was complete; and

(9) a statement verifying that the application is for an affordable or non-affordable commercial or residential sustainable building tax credit.

G. The following attachments are required for applications for installation of energy star equipment:

(1) equipment specification sheet showing complete model number and copy of energy star certification for specific model of installed items;

(2) documentation that energy star certification is for the climate zone where the unit is installed;

(3) itemized invoice showing the quantity of product, cost of the energy conserving product and cost for installation incurred within the tax year for which the application is submitted;

(4) proof of inspection and approval of installation; if applicable; and

(5) a copy of a deed, property tax bill or legal description of the building.

H. The following attachments are required for applications for installation of insulation:

(1) material specification sheet showing the R-value or U-value of insulation;

(2) material flame spread index and smoke development index specifications;

(3) a certification provided by the contractor showing the installed thickness of insulation following the manufacturer's installation instructions for blown-in or sprayed-on insulation;

(4) itemized invoice showing quantity, product and installation costs of the insulation project;

(5) proof of inspection and approval of installation; if applicable; and

(6) a copy of a deed, property tax bill or legal description of the building.

I. The following attachments are required for electric vehicle ready equipment:

(1) a specification sheet for the electric vehicle charging unit; and

(2) a one-line diagram showing the ampere and voltage rating of the dedicated branch circuit for each charging unit.

J. In addition to the foregoing, the applicant shall submit any other information the department determines it needs to review the building project for the 2021 sustainable building tax credit.

K. If the requirements established by the department have been complied with, the department shall issue to the building owner a document granting a 2021 sustainable building tax credit with an identification number, date of issuance, a calculation of the maximum amount of the 2021 sustainable building tax credit for which the building owner would be eligible and the first taxable year the credit shall be claimed.

L. To ensure compliance with 3.4.22 NMAC applicant agrees to allow the department or its authorized representative to inspect the energy conservation product installation described in the application package at any time after the date of submittal of the application package until three years after the department has certified the energy conservation product installation, upon the department providing a minimum of five days' notice to the applicant. [3.4.22.11 NMAC - Rp, 3.4.22.11 NMAC, 07/12/2022]

3.4.22.12 APPLICATION REVIEW PROCESS:

A. The department considers applications in the order received, according to the day they are received, but not the time of day.

B. The department approves or disapproves an application package following the receipt of the complete application package. The department disapproves an incomplete or incorrect application. The department's disapproval letter shall state the reasons why the department disapproved the application. The applicant may resubmit the application package for the disapproved project. The

department places the resubmitted application in the review schedule as if it were a new application.

C. The department reviews the application package to calculate the maximum 2021 sustainable building tax credit, check accuracy of the applicant's documentation and determine whether the department issues a certificate of eligibility for the 2021 sustainable building tax credit.

D. If an applicant has claimed a new solar market development income tax credit that solar system cannot be used to meet the requirements of either the certification level applied for or the energy reduction achieved. If an applicant has received a new solar market development income tax credit for a system used to meet the requirements of the certification level applied for or the energy reduction achieved, the department shall disapprove the application for the 2021 sustainable building tax credit. The applicant may submit a revised application package to the department that does not include the electricity projected to be generated by the solar system. The department places the resubmitted application in the review schedule as if it were a new application.

E. If the department finds the application package meets the requirements and a 2021 sustainable building tax credit is available, the department issues the certificate of eligibility for a 2021 sustainable building tax credit as provided in 3.4.22.8 NMAC. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building, a calculation of the maximum amount of 2021 sustainable building tax credit for which the owner would be eligible, date of issuance and the first and any subsequent taxable year(s) the credit shall be claimed.

F. If the department finds the application package for energy conservation products meets the requirements and a 2021 sustainable building tax credit is available, the department issues the certificate of eligibility for a 2021 sustainable building tax credit as provided in 3.4.22.8 NMAC. The notification shall include the taxpayer's contact information, taxpayer identification number, certificate of eligibility number or numbers, energy-conserving product certified, a calculation of the maximum amount of 2021 sustainable building tax credit for which the owner would be eligible, date of issuance and the first and any subsequent taxable year(s) the credit shall be claimed.

G. The certificate shall state the energy conservation product that is certified and that the certificate is for an affordable or non-affordable sustainable building project.

[3.4.22.12 NMAC - Rp, 3.4.22.12 NMAC, 07/12/2022]

3.4.22.13 CALCULATING THE TAX CREDIT FOR THE 2021 SUSTAINABLE BUILDING TAX CREDIT:

A. The department calculates the maximum 2021 sustainable building tax credit based on the qualified occupied square footage of the sustainable building, the rating system under which the applicant achieved certification and the certification level the applicant achieved. The tax credit for various square footages is specified in the chart below.

Sustainable commercial building that is broadband ready and electric vehicle ready and is completed after January 1, 2022:	
LEED-NC platinum first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by \$5.25
LEED-NC platinum next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by \$2.25
LEED-NC platinum over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by \$1.00
LEED-EB (O&M) or CS platinum first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by \$3.40
LEED-EB (O&M) or CS platinum next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by \$1.30
LEED-EB (O&M) or CS platinum over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by \$0.35
LEED-CI platinum first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by \$1.50
LEED-CI platinum next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by \$0.40
LEED-CI platinum over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by \$0.30
LEED-NC gold first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by \$3.00
LEED-NC gold next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by \$1.00
LEED-NC gold over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by \$0.25
LEED-EB (O&M) or CS gold first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by \$2.00
LEED-EB (O&M) or CS gold next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by \$1.00
LEED-EB (O&M) or CS gold over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by \$0.25
LEED-CI gold first 10,000 square feet	equals the qualified square footage up to 10,000 multiplied by \$0.90

LEED-CI gold next 40,000 square feet	equals the qualified square footage greater than 10,000 up to 40,000 multiplied by \$0.40
LEED-CI gold over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by \$0.10
Additional criteria	
fully electric buildings first 50,000 square feet	equals the qualified square footage up to 50,000 multiplied by \$1.00
fully electric buildings over 50,000 up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by \$0.50
zero carbon, energy, waste or water certified first 50,000 square feet	equals the qualified square footage up to 50,000 multiplied by \$0.25
zero carbon, energy, waste or water certified over 50,000 square feet up to 200,000 square feet	equals the qualified square footage greater than 50,000 up to 200,000 multiplied by \$0.10
Renovation of commercial building at least 10 years old with at least 20,000 square feet of qualified occupied square footage in which temperature is controlled and is broadband and electric vehicle ready effective January 1, 2021:	
renovation that reduces total energy consumption by 50% when compared to the most current energy standard for buildings except low-rise residential buildings as developed by american society of heating, refrigerating and air-conditioning engineers	equals qualified square footage multiplied by \$2.25 up to a maximum of \$150,000 per renovation

For the installation of these energy conserving products for renovation of sustainable affordable and non-affordable commercial buildings less than 20,000 square feet of space in which temperature is controlled and is broadband ready effective January 1, 2021:		
Product	affordable housing	non-affordable housing
energy star air source heat pump	\$2,000 including product and installation costs and associated electrical connection costs	\$1,000 including product and installation costs and associated electrical connection costs
energy star ground source heat pump	\$2,000 including product and installation costs and associated electrical connection costs	\$1,000 including product and installation costs per product installed and associated electrical connection costs
energy star windows and doors	one hundred percent of product and installation costs up to \$1,000	fifty percent of product and installation costs up to \$500 per product installed
insulation improvements that meet department's rules	one hundred percent of product and installation costs up to \$2,000	fifty percent of product and installation costs up to \$1,000 per product installed
energy star heat pump water heater	\$700 including product and installation costs and associated electrical connection costs	\$350 including product and installation costs per product installed and associated electrical connection costs
electric vehicle ready	one hundred percent of product and installation costs up to \$3,000 and associated electrical connection costs	fifty percent of product and installation costs up to \$1,500 per product installed and associated electrical connection costs

For construction of a new sustainable residential building that is broadband ready and electric vehicle ready and completed after January 1, 2022:

LEED-H platinum	equals the qualified square footage up to 2,000 multiplied by \$5.50
LEED-H gold	equals the qualified square footage up to 2,000 multiplied by \$3.80
build green emerald	equals the qualified square footage up to 2,000 multiplied by \$5.50
build green gold	equals the qualified square footage up to 2,000 multiplied by \$3.80
manufactured housing	equals the qualified square footage up to 2,000 multiplied by \$2.00
Additional criteria	
fully electric building	equals the qualified square footage up to 2,000 multiplied by \$1.00
zero carbon, energy, waste or water certified	equals the qualified square footage up to 2,000 multiplied by \$0.25

For installation of energy conserving products for renovation of affordable and non-affordable existing residential buildings effective January 1, 2021:

Product	affordable housing and low income	non-affordable housing and non-low income
energy star air source heat pump	\$2,000 including product and installation costs (per product installed if the applicant is a low-income taxpayer)	\$1,000 including product and installation costs per product installed
energy star ground source heat pump	\$2,000 including product and installation costs (per product installed if the applicant is a low-income taxpayer)	\$1,000 including product and installation costs per product installed
energy star windows and doors	one hundred percent of product and installation costs up to \$1,000 (per product installed if the applicant is a low-income taxpayer)	fifty percent of product and installation costs up to \$500 per product installed
insulation improvements that meet department's rules	one hundred percent of product and installation costs up to \$2,000 (per product installed if the applicant is a low-income taxpayer)	fifty percent of product and installation costs up to \$1,000 per product installed
energy star heat pump water heaters	\$700 including product and installation costs (per product installed if the applicant is a low-income taxpayer)	\$350 including product and installation costs per product installed
electric vehicle ready	\$1,000 including product and installation costs (per product installed if the applicant is a low-income taxpayer)	\$500 including product and installations costs per product installed

B. Energy conservation products shall meet the specified energy star rating performance requirements at the installed location.

energy star zones for New Mexico	
south-central zone	Chavez, Dona Ana, Eddy, Hidalgo, Lea, Luna and Otero counties

north-central zone	Bernalillo, Cibola, Curry, De Baca, Grant, Guadalupe, Lincoln, Quay, Roosevelt, Sierra, Socorro, Union and Valencia counties
northern	Catron, Colfax, Harding, Los Alamos, McKinley, Mora, Rio Arriba, San Juan, San Miguel, Sandoval, Santa Fe, Taos and Torrance counties

[3.4.22.13 NMAC - Rp, 3.4.22.13 NMAC, 07/12/2022]

3.4.22.14

REQUIREMENTS FOR ENERGY CONSERVING PRODUCTS:

A. Energy-conserving products shall be energy star rated for the location installed and meet the insulation requirements in 3.4.22.14 NMAC to be eligible for the 2021 sustainable building tax credit. Energy conserving products and insulation improvements eligible for the 2021 sustainable building tax credit shall meet the applicable requirements of the most current New Mexico commercial building code, the New Mexico residential building code, the New Mexico electrical code, the New Mexico mechanical code and the New Mexico plumbing code and shall be installed under a construction permit and shall be inspected by the code official having jurisdiction.

B. Insulation products and installation eligible for consideration for a tax credit are

(1) batts and blankets made of mineral fiber and mineral wool such as fiberglass, rock, slag, wool, cotton or cellulose materials; they are available with facings that serve as vapor retarders and without facings; some products have flanges to aid in installation to framed assemblies;

(2) loose-fill insulation that uses a blown installation process for cellulose, fiberglass, mineral wool and natural wools; the R-value of the blown wall insulation material installed in closed cavities is determined by the installed thickness and density; the installed density shall meet manufactured specifications; open horizontal applications, such as for attic and floors, the R-value is verified by thickness and rated coverage; in open

vertical applications the R-value shall be thickness and rated coverage as per manufacture specifications;

(3) spray polyurethane foam having an open cellular structure having a nominal density of 0.4 to 1.5 pounds per cubic foot shall have a minimum R-value of 3.6 per inch for compliance; a spray applied polyurethane foam having a closed cellular structure having a nominal density of 1.5 to less than 2.5 pounds per cubic foot shall have a minimum R-value of 5.8 per inch for compliance; the weatherproof seal placed on top of spray polyurethane foam shall protect from degradation caused by ultraviolet light, water and other normal weathering hazards; surfaces to receive the roof covering system must comply with applicable building codes and manufacturers installation recommendations;

(4) rigid insulation sheathing made from fiberglass, mineral wool, expanded polystyrene, extruded polystyrene, polyisocyanurate or polyurethane; this type of insulation may be used for roof decks, exterior walls, ceilings, basement walls, perimeter insulation or to cover window and door headers; fastening shall follow manufacturer requirements;

(5) wet insulation systems are roofing systems where insulation is installed above the waterproof membrane of a roof; installation shall meet New Mexico building code water sealing requirements;

(6) structural form wall systems made of closed cell spray foam placed in the cavity bonded to wood framing and continuous rigid board insulation on the exterior of the frame;

(7) structural insulated panels that are non-framed

advanced construction system that consists of ridged foam insulation sandwiched between two sheets of board; the insulation can be expanded polystyrene foam, extruded polystyrene foam, polyurethane or polyisocyanurate foam; and

(8) insulated concrete forms (ICF) that are a system of formwork for concrete that stays in place as permanent building insulation and can be used for cast-in-place reinforced above-and below-grade concrete walls, floors and roofs; they are interlocking modular units that can be dry stacked (without mortar) and filled with concrete as a single concrete masonry unit; ICFs lock together externally and have internal metal or plastic ties to hold the outer layers of insulation to create a concrete form.

C. Eligible insulation installations shall to the extent possible, without structural framing modification, be installed in the building cavity to the R-factor listed in the prescriptive method of the latest New Mexico energy conservation code adopted by the construction industries division of the regulation and licensing department for the applicable building cavity and construction site climate zone. In no instance shall an increase in insulating R-factor less than 10 be considered for the 2021 sustainable building tax credit. Reframing involving basic structural framing of a building is not required.

D. Mandatory requirements for insulation products.

(1) R-value identification marks shall be applied by the manufacturer to each piece of insulation 12 inches or wider. Alternatively, the insulation installer shall provide a certification listing the type, manufacturer and R-value of the

insulation install in each element of the building thermal envelope.

(2) For blown in or sprayed fiberglass and cellulose insulation, the initial installed thickness, settled thickness, settled R value, installed density, coverage area and number of bags installed shall be listed on the certification.

(3) For sprayed polyurethane foam insulation, the installed thickness shall be listed on the certification. The thickness of sprayed insulation shall be marked in inches and markers showing the thickness shall be installed every 300 square feet and attached to trusses or joists in attics. The numbers in the markers shall be at least one inch high and visible from the attic access opening.

(4) Fire rating of products shall follow the New Mexico commercial building code and New Mexico residential code.

(5) Foam plastic insulation shall be tested to demonstrate a flame-spread index of not more than 75 and a smoke-developed index of not more than 450.

(6) Exposed facing on insulation materials shall be fire resistant and tested and certified not to exceed a flame spread index of 25 and a smoke development index of 450. These indexes shall be shown on the insulation or packaging material or supplied by the manufacturer.

(7) Exposed foundation insulation shall have a protective rigid, opaque and weather-resistant protective covering to prevent the degradation of the insulation.

(8) Slab insulation must be suitable for applications in direct contact with soil and have a water absorption rate less than 0.3 percent when tested and a vapor permeance not greater than 2.0 perm/inch when tested.

(9) All insulation shall be properly sealed to prevent air leakage.

(10) To qualify for the 2021 sustainable building tax credit, insulation products installed

shall meet the most current New Mexico energy code insulation requirements adopted by the construction industries division of the regulation and licensing department.

E. Retrofits with the following construction material or methods are not eligible for the 2021 sustainable building tax credit;

(1) logs, strawbales, adobe and rammed earth;

(2) spray-in-place polyurethane foam for interior walls or ceilings;

(3) urea formaldehyde foam insulation; and

(4) passive solar technologies using direct gain, trombe walls or mass energy storage.

F. The following are mandatory requirements for fenestration products.

(1) Fenestration products shall meet energy star requirements.

(2) The temporary label on windows shall not be removed until after inspection by the code official.

(3) All fenestration products shall be properly sealed to prevent air leakage.

G. Windows and skylights.

(1) Windows are considered part of an exterior wall when the slope is 60 degrees or more as measured from the horizontal. Where the slope of the fenestration is less than 60 degrees, the glazing is considered a skylight. Skylights are not eligible for the 2021 sustainable building tax credit.

(2) Site built fenestration or field-fabricated fenestration are not eligible for the 2021 sustainable building tax credit.

H. To qualify for an electric vehicle ready 2021 sustainable building tax credit, a commercial building shall have at least ten percent of parking spaces and for residential buildings at least one parking space with one 40 ampere, 208 volt or 240 volt dedicated branch circuit for charging electric vehicles. The termination point can be a receptacle or junction

box and shall be near where electric vehicles can easily be charged. The extension cord shall be long enough to reach a vehicle and meet code and electric vehicle manufacturing requirements.

[3.4.22.14 NMAC - Rp, 3.4.22.14 NMAC, 07/12/2022]

3.4.22.15 CLAIMING THE STATE TAX CREDIT: To claim the 2021 sustainable building tax credit, an applicant shall submit all certificates of eligibility to the taxation and revenue department within 30 days of the department's issuance, along with a completed form provided by the taxation and revenue department, and any other information the taxation and revenue department may require.

[3.4.22.15 NMAC – Rp, 3.4.15 NMAC, 07/12/2022]

HISTORY OF 3.4.22 NMAC: 3.4.22 NMAC – New Sustainable building Tax Credit for Commercial Buildings, filed 12/30/15 was repealed and replaced by 3/4/22 NMAC – 2021 Sustainable Building tax Credit, effective 07/12/2022.

HIGHER EDUCATION DEPARTMENT

TITLE 5 POST-SECONDARY EDUCATION CHAPTER 7 TUITION AND FINANCIAL AID PART 37 NEW MEXICO OPPORTUNITY SCHOLARSHIP PROGRAM

5.7.37.1 ISSUING AGENCY: State of New Mexico Higher Education Department.
[5.7.37.1 NMAC - N, 7/12/2022]

5.7.37.2 SCOPE: Provisions of 5.7.37 NMAC apply to all public post-secondary institutions and tribal colleges in the state of New Mexico.
[5.7.37.2 NMAC - N, 7/12/2022]

5.7.37.3 STATUTORY

AUTHORITY: Section 9-25-1 et seq. NMSA 1978 and Chapter 42, Laws of 2022.

[5.7.37.3 NMAC - N, 7/12/2022]

5.7.37.4 DURATION:

Permanent.

[5.7.37.4 NMAC - N, 7/12/2022]

5.7.37.5 EFFECTIVE

DATE: July 12, 2022 unless a later date is cited at the end of a section.

[5.7.37.5 NMAC - N, 7/12/2022]

5.7.37.6 OBJECTIVE:

A. The objective of 5.7.37 NMAC is to provide a level of financial support to qualified New Mexico students who are enrolled at an eligible New Mexico public post-secondary educational institution or tribal college. This level of financial support is intended to help defray the cost of tuition and fees at the public post-secondary educational institution or tribal college where the student is enrolled.

B. The purpose of 5.7.37 NMAC is to encourage completion of a workforce-appropriate certificate, an associate or a bachelor's degree by providing financial support to qualified students enrolled in a minimum of six credit hours and a maximum of eighteen credit hours per fall and spring semester. The scholarship may also be awarded to qualified students enrolled in a minimum of three and a maximum of nine credit hours during the summer semester.

C. A further purpose of 5.7.37 NMAC is to encourage recent graduate learners who pursue a post-secondary education in New Mexico to complete a first four-year degree within a maximum of eight semesters or two-year degree within a maximum of four semesters by supplementing but not supplanting the New Mexico legislative lottery tuition scholarship. Returning student learners are encouraged to complete a two-year degree or a four-year degree within the maximum credit hour allowances for the scholarship prescribed in 5.7.37.9 NMAC.

D. As it applies to students with disabilities who may require special accommodations, the department, in consultation with the student and the office at the public post-secondary educational institution that serves students with disabilities, shall review the circumstances affecting student eligibility and make accommodations as deemed reasonable and appropriate, based on the student's disability needs. If a New Mexico resident had to leave the state to receive an education pursuant to the federal Individuals with Disabilities Education Act the student shall be eligible for the scholarship if they graduated from an accredited high school in another state and otherwise met the qualifications for a tuition scholarship pursuant to the definition of a qualified student.

[5.7.37.6 NMAC - N, 7/12/2022]

5.7.37.7 DEFINITIONS:

A. "Community college" means a branch community college of a four-year state educational institution, a two-year state educational institution or a community college or technical and vocational institute established pursuant to Chapter 21, Article 13 or 16 NMSA 1978.

B. "Comprehensive institution" means eastern New Mexico university, New Mexico Highlands university, northern New Mexico college or western New Mexico university.

C. "Department" means the higher education department.

D. "Eligible institution" means a public post-secondary educational institution or a tribal college that has a current and valid memorandum of understanding as described in Subsection B of 5.7.37.11 NMAC.

E. "Fees" means:

- (1) mandatory non-tuition charges levied to all students as a condition of enrollment;
- (2) course-specific fees levied in an amount not to exceed fifty dollars (\$50) per credit hour or as otherwise approved by the

department on a course-by-course basis; and

(3) shall not include charges levied for funding of capital projects or charges pledged for repayment of institutional bonds, loans or institutional debt of any type.

F. "Full time" means 15 or more credit hours each program semester of the regular academic year at four-year institutions or tribal colleges and 12 or more credit hours each program semester of the regular academic year in two-year institutions for recent graduate learners.

G. "Independent student" means a student with established financial need and no means of familial support as evidenced by their filing status on the free application for federal student aid or other means of income verification as determined by the institution.

H. "Opportunity scholarship" means an award to recent graduate learners and returning student learners.

I. "Public post-secondary educational institution" means a state educational institution or a community college.

J. "Qualified student" means a recent graduate learner or a returning student learner.

K. "Recent graduate learner" means a full-time student who does not have a bachelor's, master's or doctoral degree and who graduated from a public or accredited private New Mexico high school or who received a high school equivalency credential while maintaining residency in New Mexico and who either:

(1) within 16 months of graduation or receipt of a high school equivalency credential, was accepted for entrance to and attended an eligible institution; or

(2) within four months of graduation or receipt of a high school equivalency credential, began service in the United States armed forces and, within 16 months of completion of honorable service or medical discharge from the service, attended an eligible institution; and

(3) successfully completed the first semester at an eligible institution with a grade point average of 2.5 or higher on a 4.0 scale during the first semester of full-time enrollment and maintains a cumulative grade point average of 2.5 or higher on a 4.0 scale at an eligible institution.

L. “Research institution” means New Mexico institute of mining and technology, New Mexico state university and the university of New Mexico.

M. “Returning student learner” means a student 18 years of age or older who does not otherwise meet the definition of a recent graduate learner, has a high school diploma or who has received a high school equivalency credential and who does not have a bachelor’s, master’s or doctoral degree, who has been a resident of New Mexico for the preceding 12 consecutive months and who maintains a cumulative grade point average of 2.5 or higher on a 4.0 scale at an eligible institution.

N. “State educational institution” means an institution of higher education enumerated in Article 12, Section 11 of the constitution of New Mexico.

O. “Tribal college” means a tribally, federally or congressionally chartered eligible institution located in New Mexico that is accredited by the higher learning commission.

P. “Tuition” means mandatory instructional costs paid by or for a qualified student to an eligible institution for coursework.

Q. “Workforce certificate” means a department-approved, credit-bearing certificate of two years’ duration or less where data indicates the certificate is in high demand as determined in consultation with the New Mexico department of workforce solutions.

[5.7.37.7 NMAC - N, 7/12/2022]

5.7.37.8 STUDENT ELIGIBILITY:

A. A scholarship may be awarded to a student who has met initial eligibility requirements as follows:

(1) has established and maintained New Mexico residency as defined in 5.7.18.9 NMAC or is eligible for a nondiscrimination waiver as defined in Subsection K of 5.7.18.10 NMAC. All residency requirements for recent graduate learners must be met upon completion of high school, graduation, or receipt of a high school equivalency credential recognized by the state of New Mexico;

(2) has been determined to be a qualified student pursuant to Subsection K or M of 5.7.37.7 NMAC;

(3) for a recent graduate learner, is enrolled full time, but not enrolled in more than 18 credit hours in the fall or spring semester;

(4) for a returning student learner, is enrolled in at least six credit hours, but not more than 18 credit hours in the fall or spring semester;

(5) qualified students may enroll in no less than three credit hours, but not more than nine credit hours in the summer semester; and

(6) has met requirements in Paragraphs (1) through (4) of Subsection A of 5.7.37.8 NMAC or students with exceptional mitigating circumstances as determined by the institution’s lead financial aid officer; students who are incapable of meeting the requirements specified in Paragraphs (1) through (4) of Subsection A of 5.7.37.8 NMAC due to a documented exceptional mitigating circumstance do not forfeit eligibility for the opportunity scholarship; however, the following requirements shall apply:

(a) the student shall provide documents certifying the nature of the students exceptional mitigating circumstance to the institution’s lead financial aid officer at the post-secondary educational institution at which the student is enrolling or will enroll; the institution’s lead financial aid officer shall exercise professional judgment to determine whether the exceptional mitigating circumstance is beyond the student’s control and precludes

the student from meeting the requirements specified in Paragraphs (1) through (4) of Subsection A of 5.7.37.8 NMAC;

(b) if, in the professional judgment of the institution’s lead financial aid officer, the student’s exceptional mitigating circumstance is recognized as a valid reason for the student’s inability to meet the requirements specified in Paragraphs (1) through (4) of Subsection A of 5.7.37.8 NMAC the student’s initial or continuing eligibility for the opportunity scholarship shall be suspended or deferred unless and until such time that the student is capable of meeting the requirements of Paragraphs (1) through (4) Subsection A of 5.7.37.8 NMAC.

B. Other provisions regarding initial eligibility.

(1) Students with disabilities shall obtain a referral from the student services division of the public post-secondary educational institution or tribal college where the student is enrolled that oversees students with special needs’ requests to reduce the credit hours to be considered full-time for scholarship eligibility; referrals and any sufficient documentation shall be received within 30 days of the start of the student’s first semester. The documentation may be reused for the subsequent semesters unless the student is requesting to decrease their approved credit hours. In this case updated documentation shall be required prior to the start of the semester for which the student is enrolling.

(2) Students are encouraged, but are not required, to complete a free application for student aid (FAFSA) for scholarship eligibility.

(3) During the 16 months after high school graduation, completion of the requirements of a home-based or non-public-school primary educational program, or receipt of a high school equivalency credential recognized by the state of New Mexico a recent graduate learner may attend a public

post-secondary educational institution or tribal college prior to their initial semester less than-full time without affecting future program eligibility. Once a recent graduate learner is enrolled and attends a public post-secondary educational institution or tribal college full-time during the 16 months after high school graduation, completion of the requirements of a home-based or non-public-school primary educational program, or receipt of high school equivalency credential recognized by the state of New Mexico, the recent graduate learner shall be considered to have commenced the initial semester and must meet the initial semester eligibility requirements within Subsection A of 5.7.37.8 NMAC.

C. Continuing eligibility. Upon satisfaction of the initial eligibility requirements, the scholarship will be re-awarded to a recent graduate learner during the second semester of continuous enrollment and re-awarded to a returning student learner during the second continuous semester of enrollment. A student's continuing eligibility shall be determined on a semester basis.

(1) An opportunity scholarship award may be re-awarded to a student who:

(a) maintains a minimum of a 2.5 cumulative GPA; a student has the right to request use of the student's cumulative GPA earned at all New Mexico public post-secondary educational institutions and tribal colleges; and

(b) maintains continuous enrollment and meets earned credit hour criteria as provided in Paragraphs (3) through (5) of Subsection A of 5.7.37.8 NMAC. When a recent graduate learner transfers after completion of the first semester from a two year institution to a four year institution for enrollment during the second or subsequent program semester, a student will have met eligibility requirements, but said student must enroll in 15 credit hours upon transfer to maintain eligibility;

(i) receipt of a transfer transcript for sufficient documentation for eligibility;

(ii) student transfers shall defer to the receiving institution to determine eligibility.

(2) Students with disabilities may be re-awarded the opportunity scholarship under the following conditions:

(a) a referral is obtained for each semester in which a reduction in credit hours is requested;

(b) maintains a minimum of a 2.5 cumulative GPA; and

(c) in no case shall eligibility extend beyond 90 attempted credit hours for completion of an associate degree or 160 attempted credit hours for completion of a bachelor's degree unless otherwise authorized by the department.

(3) An eligible student that transfers shall continue to be eligible at the receiving institution after receipt of the student's transfer transcript containing eligibility confirmation.

D. Probation. Students who have been determined to be eligible and subsequently have exceptional mitigating circumstances as determined by the institution's lead financial aid officer may be placed on a probationary status under the following conditions:

(1) the student shall provide documents certifying the nature of their exceptional mitigating circumstance to the lead financial aid officer at the post-secondary institution at which the student is enrolling or will enroll;

(2) the lead financial aid officer shall exercise professional judgment to determine whether the exceptional mitigating circumstance is beyond the student's control and precludes the student from meeting the requirements specified in Subsection A of 5.7.37.8 NMAC; and

(3) a student may receive scholarship funding

while on probationary status, however under no circumstances shall the student receive program awards in excess of those prescribed in Subsections A through D of 5.7.37.9 NMAC.

E. Petition for reinstatement. A recent graduate learner that loses eligibility for the opportunity scholarship or legislative lottery scholarship pursuant to 5.7.37.12 NMAC or 5.7.20.12 NMAC and has not been approved for a probationary semester may petition for reinstatement of eligibility for the opportunity scholarship as a returning student learner no sooner than two years following the end of the semester when eligibility was lost. A returning student learner that loses eligibility for the opportunity scholarship pursuant to 5.7.37.12 NMAC and has not been approved for a probationary semester may petition for reinstatement of eligibility for the opportunity scholarship as a returning student learner no sooner than two years following the end of the semester when eligibility was lost. [5.7.37.8 NMAC - N, 7/12/2022]

5.7.37.9 DURATION OF SCHOLARSHIP:

A. Upon qualification, the student's initial scholarship shall begin with enrollment at a public post-secondary educational institution or tribal college. Thereafter, each scholarship is for a period of one semester subject to revocation for failure to maintain eligibility. The scholarship may be renewed on a per semester basis.

B. Scholarships may be provided to an eligible student seeking one or more credit-bearing workforce certificates. A scholarship for a credit-bearing workforce certificate may only be awarded where data indicates that the certificate is in high demand by New Mexico employers as determined by the department in consultation with the New Mexico workforce solutions department.

C. Scholarships may continue for an eligible student for up to 90 attempted credit hours for the completion of an associate degree.

D. Scholarships may continue for an eligible student for up to 160 attempted credit hours for the completion of a bachelor's degree.

E. The student's institutional lead financial aid officer may approve a leave of absence for a period of up to one year if in the lead financial aid officer's professional judgment the student has provided sufficient documentation to justify the leave of absence. Subsequent requests for an additional leave of absence by a student may be considered by the institution's lead financial aid officer in increments not to exceed one year.

F. The lead financial aid officer shall, in turn, ensure that the student does not receive scholarship awards in excess of those prescribed in Subsections A through D of 5.7.37.9 NMAC and shall exclude the semesters of "non-enrollment" from the determination of eligible award semesters.
[5.7.37.9 NMAC - N, 7/12/2022]

5.7.37.10 AMOUNT OF SCHOLARSHIP:

A. To the extent that funds are made available from the fund, the board of regents or governing bodies of public post-secondary educational institutions and tribal colleges shall award tuition scholarships in department approved amounts to qualified students.

B. The method the department will use for calculating the tuition scholarship is as follows:

(1) estimate the total amount available in the opportunity scholarship fund, based on transfers, current year balances, and additional funds made available through legislation;

(2) estimate the number of scholarship recipients for each institution, based on department endorsed institutional projections;

(3) calculate the tuition scholarship for each sector (research, comprehensive, and community college) and tribal college in accordance with Section 21-21N-4 NMSA 1978;

(4) calculate the total amount needed to pay full tuition and fees to all estimated recipients;

(5) compute an award for each scholarship recipient distributed in amounts as follows:

(a) one thousand five hundred dollars (\$1,500) per scholarship per program semester for a student enrolled at a research institution;

(b) one thousand twenty dollars (\$1,020) per scholarship per program semester for a student enrolled at a comprehensive institution or tribal college; and

(c) three hundred-eighty dollars (\$380) per scholarship per program semester for a student enrolled at a community college;

(6) If the total amount available pursuant to Paragraph (3) of Subsection B of 5.7.37.10 NMAC is less than the amount calculated in Paragraph (5) of Subsection B of 5.7.37.10 NMAC, the department shall decrease the scholarship award amounts in a manner that maintains the distribution in the same proportions as provided in Paragraph (5) of Subsection B of 5.7.37.10 NMAC. If the total amount available pursuant to Paragraph (3) of Subsection B of 5.7.37.10 NMAC is more than the amount calculated in Paragraph (5) of Subsection B of 5.7.37.10 NMAC, the department shall increase the scholarship award amounts in a manner that maintains the distribution in the same proportions as provided in Paragraph (5) of Subsection B of 5.7.37.10 NMAC; and

(7) notify institutions of the maximum award by June 1st annually.

C. In no case shall a student receive scholarship awards exceeding the total amount of tuition and fees charged after all other state aid has been applied.

D. Qualified students in their graduating semester shall receive a tuition scholarship proportional to the number of credit

hours required to graduate. Students in their graduating semester may enroll in less than six credit hours and maintain eligibility.

E. For qualified students in their first semester, preference shall be given to independent students before other students to the extent funds are available.

F. Opportunity scholarships may supplement but shall not supplant institutional aid such as three percent or bridge scholarships in the first semester.

G. Opportunity scholarships may be awarded to qualified students prior to institutional aid such as three percent or bridge scholarships in the second semester and beyond.

[5.7.37.10 NMAC - N, 7/12/2022]

5.7.37.11 ADMINISTRATION OF THE OPPORTUNITY SCHOLARSHIP:

A. Eligible public post-secondary educational institutions and tribal colleges shall:

(1) notify students of their possible eligibility, during their first regular semester of enrollment including transfer students who had the opportunity scholarship at previous institutions;

(2) designate their institution's lead financial aid officer to be responsible for determining initial and continuing student eligibility for the opportunity scholarship under the terms of these rules and regulations;

(3) maintain a listing of each participating student to include, but not be limited to:

(a) social security number as appropriate;

(b) cumulative GPA and completed enrollment hours in prior semesters;

(c) proof of initial and continuing enrollment;

(d) award semester; and

(e) other data fields deemed important by the department;

(4) draw-down files should be submitted to the department for eligible students as defined in 5.7.37.10 NMAC per semester; all fiscal year draw-downs shall be for eligible students enrolled during the same fiscal year;

(5) for students that satisfied the first semester eligibility requirements and seek continuing eligibility consideration, use professional judgment to determine that exceptional mitigating circumstances beyond the students control, for which documentation exists in the student's file; the institutions shall defer to their institutional satisfactory academic progress policy when considering circumstances which include, but are not limited to, consideration for falling below the cumulative GPA requirement or successfully maintaining enrollment as defined in Paragraphs (3) through (5) of Subsection A of 5.7.37.8 NMAC;

(6) provide to the department by April 15 each year the projected enrollment and tuition rates for the following academic year for their institution;

(7) publish the probation policy as defined in Subsection D of 5.7.37.8 NMAC;

(8) encourage consortium agreements, as defined in the code of federal regulations, 34 CFR 6685, in order to facilitate the enrollment of students and to facilitate the student's participation in this program; and

(9) ensure that all available state aids including legislative lottery scholarships are awarded before granting opportunity scholarships; the intent of this provision is that tuition and fee costs shall be paid first for those students eligible for merit-based aid packages funded by three percent scholarships; in those instances when tuition is not fully covered by the merit-based aid package, said student is eligible for the tuition and fee cost differential to be funded by the opportunity scholarship program; nothing in this section requires a public post-secondary educational institution

to award a scholarship inconsistent with the criteria established or such scholarship; refer to 5.7.37.10 NMAC for additional provisions.

B. The department shall:

(1) Enter into a memorandum of understanding on or before June 1st with each eligible institution describing:

(a) the maximum amount of tuition and fees per student that may be paid by the opportunity scholarship fund each fiscal year;

(b) the total amount available to the eligible institution for opportunity scholarships each fiscal year;

(c) the reimbursement of any tuition or fee structures not captured within the definitions of Subsections E and P of 5.7.37.7 NMAC; and

(d) eligible workforce certificate programs.

(2) make available to the legislative finance committee and department of finance and administration, by November 1, the following information:

(a) the status of the fund;

(b) scholarship program participation data aggregated for each public post-secondary education institution and tribal college to show:

(i) the number of qualified students who received opportunity scholarships and in the prior 12 month period;

(ii) the total number of qualified students enrolled in the prior 12-month period;

(iii) the amount of tuition scholarships funded by semester and the amount of tuition costs that were not offset by the tuition scholarship by semester; and

(iv) the number of qualified students who graduated with a degree and, for each qualified student, the number of consecutive semesters and nonconsecutive semesters attended

prior to graduation.
[5.7.37.11 NMAC - N, 7/12/2022]

5.7.37.12 TERMINATION OF SCHOLARSHIPS:

A scholarship is terminated upon noncompliance by the award recipient with the opportunity scholarship rules, regulations or procedures as promulgated by the department.

[5.7.37.12 NMAC - N, 7/12/2022]

History of 5.7.37 NMAC:
[RESERVED]

HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.7.34 NMAC Section 8 effective 7/12/2022.

5.7.34.8 STUDENT ELIGIBILITY AND SELECTION OF AWARD RECIPIENTS:

A. A scholarship may be granted to a student who:

(1) is a resident of New Mexico as defined in 5.7.18.9 NMAC or is eligible for the nondiscrimination waiver as defined in Subsection K of 5.7.18.10 NMAC;

(2) is enrolled or enrolling at least half-time at an eligible institution in a teacher preparation program that leads to an appropriate educational credential to be licensed as a teacher by the public education department including but not limited to an education major or alternative licensure certification program. The student's enrollment must be later than 120 days following high school graduation or the award of a high school equivalency credential recognized by the State of New Mexico;

(3) has not earned appropriate educational credentials to be licensed as a teacher by the public education department; and

(4) has demonstrated financial need as determined by the institution.

B. Institutions shall make awards first to students who

meet the provisions of Subsection A of 5.7.34.8 NMAC and who:

(1) are English language learners whose first or heritage language was not English;

(2) are historically underrepresented minorities in New Mexico's teaching profession; or

(3) have declared intent to teach in a high-need teacher position as defined by the public education department.

C. After scholarships have been awarded to eligible students pursuant to Subsection B of 5.7.34.8 NMAC, institutions shall make awards to students who meet the provisions of Subsection A of 5.7.34.8 NMAC [5.7.34.8 NMAC - N, 7/30/2019; A, 7/12/2022]

LIVESTOCK BOARD

TITLE 21 AGRICULTURE AND RANCHING CHAPTER 33 ABATTOIRS, MEAT DEALERS AND STORAGE PLANTS PART 2 FOOD SAFETY, MEAT AND POULTRY INSPECTION

21.33.2.1 ISSUING

AGENCY: New Mexico Livestock Board.
[21.33.2.1 NMAC - N., 7/12/2022]

21.33.2.2 SCOPE:

Regulating the states meat and poultry inspection program.
[21.33.2.2 NMAC - N, 7/12/2022]

21.33.2.3 STATUTORY

AUTHORITY: Section 77-2-7 through 77-2-29; NMSA 1978, Section 77-3-9; NMSA 1978, Section 77-3-1 through Section 77-3-17; NMSA 1978, Section 77-9-1 through 77-9-63; NMSA 1978, Section 77-17-1 through Section 77-17-15; NMSA 1978, Section 30-18-1 through Section 30-18-14 NMSA 1978.
[21.33.2.3 NMAC - N, 7/12/2022]

21.33.2.4 DURATION:

Permanent.
21.33.2.4 NMAC - N, 7/12/2022]

21.33.2.5 EFFECTIVE

DATE: July 12, 2022 unless a later date is cited at the end of a section.
[21.33.2.5 NMAC - N, 7/12/2022]

21.33.2.6 OBJECTIVE:

The New Mexico livestock board (NMLB), through its meat and poultry inspection division (MPID), seeks to regulate the production of meat and poultry products under a state meat and poultry inspection (MPI) program with the purpose to protect consumers while encouraging the economic development of New Mexico agricultural businesses and communities.
[21.33.2.6 NMAC - N, 7/12/2022]

21.33.2.7 DEFINITIONS:

A. "MPID" is a division within the NMLB tasked with carrying out the provisions of laws relating to a state meat and poultry inspection (MPI) program.

(1) The MPID director may adopt additional policies and procedures as necessary to define, clarify and maintain agency functions for consistency with 9 CFR and related federal acts (*e.g.*, Meat Inspection Act (21 USCS Section 601 *et seq*; Poultry Products Inspection Act (21 USCS Section 451 *et seq*); Humane Methods of Slaughter Act (7 USC 1901 *et seq*).

(2) The MPID director, with board approval, may enter into agreements with other state, federal, local, tribal and other organizations as needed to further the purpose and provisions of these regulations, and the MPI program at large, to achieve "at least equal to" status.

B. "NMLB" is a political subdivision of the state of New Mexico tasked with protecting the livestock industry from theft and disease and protecting consumers from unwholesome meat products.

C. "Secretary" the term Secretary, when used in 9 CFR, shall mean the MPID director.

D. "Unwholesome"

refers to anything that is or could reasonably contribute to a meat or poultry product being injurious to human health.

E. Provided that sufficient authority has been provided under state law as provided by the legislature, any ambiguity or conflict should be interpreted in a matter consistent with federal law.

F. Any regulation herein found to be defective by a court of competent jurisdiction shall be interpreted in a manner to leave remaining regulations intact.
[21.33.2 NMAC – N7/12/2022]

21.33.2.8 REGULATION OF MEAT AND POULTRY

PRODUCTS: The NMLB, through the MPID, adopts by reference the following federal regulations in the Code of Federal Regulations (CFR), as amended:

A. 9 CFR, Part 301, terminology; adulteration and misbranding standards;

B. 9 CFR, Part 303, exemptions;

C. 9 CFR, Part 304, application for inspection; grant of inspection;

D. 9 CFR, Part 305, official numbers; inauguration of inspection; withdrawal of inspection; reports of violation;

E. 9 CFR, Part 306, assignment and authorities of program employees;

F. 9 CFR, Part 307, facilities for inspection;

G. 9 CFR, Part 309, ante-mortem inspection;

H. 9 CFR, Part 310, post-mortem inspection;

I. 9 CFR, Part 311, disposal of diseased or otherwise adulterated carcasses and parts;

J. 9 CFR, Part 312, official marks, devices and certificates;

K. 9 CFR, Part 313, humane slaughter of livestock;

L. 9 CFR, Part 314, handling and disposal of condemned or other inedible products at official establishments;

M. 9 CFR, Part 315, rendering or other disposal of carcasses and parts passed for cooking;

N. 9 CFR, Part 316, marking products and their containers;

O. 9 CFR, Part 317, labeling, marking devices, and containers;

P. 9 CFR, Part 318, entry into official establishments; reinspection and preparation of products;

Q. 9 CFR, Part 319, definitions and standards of identity or composition. The following requirements shall apply except in the case of restaurant menus and signs.

R. 9 CFR, Part 320, records, registration, and reports;

S. 9 CFR, Part 321, cooperation with states and territories;

T. 9 CFR, Part 322, exports;

U. 9 CFR, Part 325, transportation;

V. 9 CFR, Part 327, imported products;

W. 9 CFR, Part 329, detention; seizure and condemnation; criminal offenses;

X. 9 CFR, Part 331, special provisions for designated states and territories; and for designation of establishments which endanger public health and for such designated establishments;

Y. 9 CFR, Part 335, rules of practice governing proceedings under the federal meat inspection act;

Z. 9 CFR, Part 350, special services relating to meat and other products;

AA. 9 CFR, Part 352, exotic animals and horses; voluntary inspection;

BB. 9 CFR, Part 354, voluntary inspection of rabbits and edible products thereof;

CC. 9 CFR, Part 355, certified products for dogs, cats, and other carnivora; inspection, certification, and identification as to class, quality, quantity, and condition;

DD. 9 CFR, Part 362, voluntary poultry inspection regulations;

EE. 9 CFR, Part 381, poultry products inspection regulations;

FF. 9 CFR, Part 416, sanitation;

GG. 9 CFR, Part 417, hazard analysis and critical control point (HACCP) systems;

HH. 9 CFR, Part 418, recalls;

II. 9 CFR, Part 424, preparation and processing operations;

JJ. 9 CFR, Part 430, requirements for specific classes of product;

KK. 9 CFR, Part 441, consumer protection standards: raw products;

LL. 9 CFR, Part 442, quantity of contents labeling and procedures and requirements for accurate weights;

MM. 9 CFR, Part 500, rules of practice.
[21.33.2.8 NMAC -N, 7/12/2022]

HISTORY OF 21.33.2 NMAC:
21.33.2 NMAC, Food Safety, Meat and Poultry Inspection, filed 6/15/2006.

History of Repealed Material:
21.33.2 NMAC, Food Safety, Meat and Poultry Inspection, filed 06/15/2006 - Repealed effective 7/15/2013.
21.33.2 NMAC, Food Safety, Meat and Poultry Inspection, Repealed 7/15/2013 has been replaced by 21.33.2 NMAC, Food Safety Meat and Poultry Inspection effective 7/12/2022.

MEDICAL BOARD

This is an amendment to 16.10.2 NMAC, Sections 7, 9, 12, 13 thru 15, 18 thru 20 effective 7/12/2022.

16.10.2.7 DEFINITIONS:

A. “Absence of good moral character” means any conduct that calls into question an applicant’s fitness or suitability to engage in licensed practice, or that is antithetical to the promotion of the public health,

safety, and welfare, as determined by the board, constitutes a lack of good moral character. The conduct subject to the Board’s evaluation for good moral character may or may not arise in the context of professional practice.

B. “AOA” means the American osteopathic association.

C. “AOA-BOS” means the American osteopathic association bureau of osteopathic specialists.

D. “Board approved school” means a medical school that has been approved by the liaison committee on medical education, composed of the American medical association and the association of American medical colleges, has a liaison council on medical education (LCME)-approved curriculum or equivalent for graduates of Canadian schools, ~~[is on the approved list of the California state medical board,]~~ is accredited by the American osteopathic association or commission on osteopathic accreditation, or has been approved by the board. Foreign medical graduates that are vetted and approved for a board approved training program and hold an ECFMG certification are considered to have graduated from an acceptable medical education, as if they have graduated from a board approved school.

E. “Board approved training program” means a program approved by the accrediting council on graduate medical education of the American medical association (ACGME), is approved by American osteopathic association (AOA), the royal college of physicians and surgeons of Canada (RCPSC), or a residency program located within an ACGME approved institution that has been approved by the board.

F. “Board approved credential verification service” means a credential verification service certified by the national commission on quality assurance (NCQA) and approved by the board.

G. “Disqualifying criminal conviction” means a conviction pursuant to the Uniform Licensing Act, Section 61-1-36, NMSA 1978, for a crime that is job-

related for the position in question and consistent with business necessity.

[H] I. “ECFMG” means educational commission for foreign medical students.

[H] I. “FCVS” means the federation credential verification service of the federation of state medical boards.

[H] J. “Good moral character” means qualities evidencing an applicant’s present good moral character for purposes of licensure including candor, honesty, integrity, a respect for the law, regard for the welfare, safety, and rights of another, and fidelity and trustworthiness in the practice of the professions for which they may be licensed. Conversely, an applicant whose conduct reflects the absence of one or more of these qualities may be said to lack the good moral character required for licensure. It is a continuing duty to exhibit good moral character as a licensee. Absence of good moral character means any conduct that calls into question an applicant’s fitness or suitability to engage in licensed practice, or that is antithetical to the promotion of the public health, safety, and welfare, as determined by the board, constitutes a lack of good moral character. The conduct subject to the board’s evaluation for good moral character may or may not arise in the context of professional practice.

[H] K. “HSC” means the hospital services corporation, a New Mexico corporation, and a credential verification organization certified by the national commission on quality assurance (NCQA).

[K] L. “Major disaster” means a declaration of a major disaster by the federal emergency management agency (FEMA).

[E] M. “Military service member” means a person who is serving in the armed forces of the United States or in a reserve component of the armed forces of the United States, including the national guard.

[M] N. “Nationwide criminal history record,” information concerning a person’s

arrests, indictments, or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized databases of the federal bureau of investigation, the national law enforcement telecommunications systems, the department of public safety or the repositories of criminal history information in other states.

[N] O. “Nationwide criminal history screening,” a criminal history background investigation of an applicant for licensure by examination or endorsement through the use of fingerprints reviewed by the department of public safety and submitted to the federal bureau of investigation, resulting in the generation of a nationwide criminal history record for that applicant.

P. “Out of state sports team,” means an entity or organization:

(1) for which athletes engage in sporting events;

(2) headquartered or organized under laws other than the laws of New Mexico; and

(3) a majority of whose staff and athletes are residents of another state.

[Θ] Q. “Physician” means allopathic doctor (MD) or doctor of osteopathy (DO).

[P] R. “Recent veteran” means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applies for a medical license pursuant to 16.10.2.17 NMAC. The veteran shall submit a copy of Form DD214, or its equivalent, as part of the application process.

S. “Sporting event” means a scheduled sporting event involving an out of state sports team for which an admission fee is charged to the public, including any preparation or practice related to the activity.

[Q] T. “Telemedicine” means the practice of medicine across state lines as defined in the Medical Practice Act, Section 61-6-6, K NMSA 1978.

[16.10.2.7 NMAC - Rp 16 NMAC 10.2.7, 4/18/2002; A, 1/20/2003; A, 10/7/2005; A, 12/30/2005; A, 7/1/2006; A, 1/10/2007; A, 10/11/2013; A, 7/12/2022]

16.10.2.9 MEDICAL LICENSE BY EXAMINATION:

A. Prerequisites for licensure: Each applicant for a license to practice as a physician in New Mexico must be of good moral character and must possess the following qualifications:

(1) graduated and received a diploma from a board approved school, completed a program determined by the board to be substantially equivalent to a U.S. medical school, based on [board review of an evaluation by a board approved credential evaluation service;] Board review of a full ECFMG certification, or the board shall, in its sole discretion, determine if the applicant’s total educational and professional clinical experience is substantially equivalent to that which is required for licensure in New Mexico; and

(2) successfully passed one of the examinations or combinations of examinations defined in 16.10.3 NMAC; and

(3) completed two years of postgraduate training or been approved by the board in accordance with the provisions of Subsection B of Section 61-6-11 NMSA 1978;

(4) when the board has reason to believe that an applicant for licensure is not competent to practice medicine it may require the applicant to complete a special competency examination or to be evaluated for competence by other means that have been approved by the board; and

(5) a qualified applicant who has not been actively and continuously in practice for more

than two years prior to application may be required to successfully complete a special examination or evaluation such as, but not limited to, the SPEX (special purpose examination), the PLAS (post-licensure assessment system of the federation of state medical boards), or specialty re-certification.

B. Required documentation for all applicants: Each applicant for a license must submit the required fees as specified in 16.10.9.8 NMAC and the following documentation:

(1) a completed signed application with a passport-quality photo taken within the previous six months; applications are valid for one year from the date of receipt by the board;

(2) verification of licensure in all states or territories where the applicant holds or has held a license to practice medicine, or other health care profession; verification must be received directly from the other state board(s), and must attest to the status, issue date, license number, and other information requested and contained on the form; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board for applicants using FCVS or applying directly to the board;

(3) two recommendation forms from physicians, chiefs of staff or department chairs or equivalent with whom the applicant has worked and who have personal knowledge of the applicant's character and competence to practice medicine; the recommending physicians must have personally known the applicant and have had the opportunity to personally observe the applicant's ability and performance; forms must be sent directly to the board from the recommending physician; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board for

applicants using FCVS or applying directly to the board;

(4) verification of all work experience and hospital affiliations in the last two years, if applicable, not to include postgraduate training; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board for applicants using FCVS or applying directly to the board;

(5) a copy of all American board of medical specialties (ABMS) specialty board certifications, or American osteopathic association bureau of osteopathic specialists (AOA-BOS) if applicable; this information will be provided by HSC or another board-approved credentials verification service for applicants using that service, or directly to the New Mexico medical board for applicants using FCVS or applying directly to the board; and

(6) the board may request that applicants be investigated by the biographical section of the American medical association (AMA), the drug enforcement administration (DEA), the federation of state medical boards (FSMB), the national practitioner data bank, and other sources as may be deemed appropriate by the board;

(7) applicants who are not United States citizens must provide proof that they are in compliance with the immigration laws of the United States.

C. Additional documentation for applicants using the FCVS: Applicants are encouraged to use the FCVS as once a credential file is created future applications for medical licensure will be streamlined. However, application through FCVS is not required. Applicants using the FCVS must submit a completed application to the FCVS, who will provide primary source documentation to the board. Only the documents required in Subsection B of 16.10.2.9 NMAC are required in addition to the FCVS report.

D. Additional documentation for applicants using HSC or another board-approved credentials verification service:

(1) status report of educational commission for foreign medical graduates (ECFMG) certification sent directly to the board from ECFMG, if applicable;

(2) copy of ECFMG interim letter documenting additional postgraduate training for international medical graduates applying through the fifth pathway process, if applicable;

(3) certified transcripts of exam scores as required in 16.10.3 NMAC sent directly to the board from the testing agency;

(4) proof of identity may be required; acceptable documents include birth certificate, passport, naturalization documents, and visas.

E. Additional documentation for applicants applying directly to New Mexico and not using FCVS or HSC or another board-approved credentials verification service:

(1) verification of medical education form with school seal or notarized, sent directly to the board from the school;

(2) transcripts sent directly to the board from the medical school;

(3) status report of ECFMG certification sent directly to the board from ECFMG, if applicable;

(4) copy of ECFMG interim letter documenting additional postgraduate training for international medical graduates applying through the fifth pathway process, if applicable;

(5) postgraduate training form sent to the board directly from the training program;

(6) certified transcripts of exam scores as required in 16.10.3 NMAC sent directly to the board from the testing agency; and

(7) proof of identity may be required; acceptable documents include birth certificate,

passport, naturalization documents, and visas;

(8) certified copies of source documents obtained directly from another state licensing jurisdiction who has the original document on file will be accepted in lieu of original documents when the originals cannot be obtained for a valid cause.

F. Licensure

process: Upon receipt of a completed application, including all required documentation and fees, the applicant may be scheduled for a personal interview before the board, a board member designated by the board, or an agent of the board and must present original documents as requested by the board. The initial license will be issued following completion of any required interview, or approval by a member or agent of the board.

G. Initial license

expiration: Medical licenses shall be renewed on July 1 following the date of issue. Initial licenses are valid for a period of not more than thirteen months or less than one month. If New Mexico is the first state of licensure, initial licenses are valid for a period of not less than 24 months or more than 35 months and shall be renewed on July 1.

[16.10.2.9 NMAC - N, 5/1/2002; A, 1/20/2003; A, 7/1/2003; A, 4/3/2005; A, 10/7/2005; A, 7/1/2006; A, 1/10/2007; A, 1/3/2008; A, 10/11/2013; A, 01/15/2014; A, 7/12/2022]

16.10.2.12 POST GRADUATE TRAINING LICENSE: A

postgraduate training license is required for all interns, residents, and fellows enrolled in board approved training programs within the state. Individuals enrolled in board approved training programs outside of New Mexico may apply for a postgraduate training license as a prerequisite to obtaining a New Mexico public service license.

A. Prerequisites

for licensure: Each applicant for a postgraduate training license must possess the following qualifications:

(1) graduated from a board approved school or completed a program determined by the board to be substantially equivalent to a U.S. medical school or college of osteopathic medicine [~~based on board review of an evaluation by a board approved credential evaluation service~~];

(2) passed part I of the United States medical licensing examination (USMLE) or COMLEX; and

(3) be of good moral character.

B. Required

documentation: Each applicant shall submit the required fee as specified in 16.10.9.8 NMAC and complete the board-approved application.

(1) Applicants enrolled at the university of New Mexico health science center must submit an application through the office of graduate medical education for review before it is forwarded to the board for review and approval.

(2) Applicants enrolled at a board approved training program outside New Mexico must submit the postgraduate training license application directly to the board.

(3) A copy of the official examination results must be attached to each application.

C. Licensure process:

Upon receipt of a completed signed application and fee, a member or agent of the board will review the application and may approve the license. The applicant may be scheduled for a personal interview before the board, a board member designated by the board, or an agent of the board.

D. License expiration:

Postgraduate training licenses are valid for no longer than one year, but may be renewed for a period not to exceed eight years or completion of the residency, whichever is shorter, and as long as the license holder is enrolled in a board approved training program. Postgraduate training licenses may be renewed prior to expiration.

[16.10.2.12 NMAC - Rp, 16 NMAC 10.2.14, 4/18/2002; 16.10.2.12 NMAC - Rn, 16.10.2.11 NMAC, 1/20/2003; A, 10/7/2005; A, 7/1/2006; A, 1/3/2008; A, 10/11/2013; A, 7/12/2022]

16.10.2.13 PUBLIC

SERVICE LICENSE: A resident physician may apply for a public service license, which enables him to practice medicine outside the training program. The resident physician must be continuing in the board approved training program.

A. Prerequisites for

licensure: Each applicant for a public service license shall have graduated from [~~an approved medical school~~], a board approved school, passed all required examinations as defined in 16.10.3 NMAC, and completed one year of postgraduate training. In addition, the applicant shall have completed an application for licensure including all required documentation required in Subsection B through Subsection E of 16.10.2.9 NMAC as applicable. Other requirements include:

(1) written approval from his training program director;

(2) a postgraduate training license issued by the New Mexico medical board;

(3) a resident physician with one year postdoctoral training may only apply for a public service license when he is under the direct supervision of a New Mexico physician or when employed in a medically underserved area;

(4) if a physician is not being supervised directly, there must be procedures in place for a licensed New Mexico physician to review, on at least a quarterly basis, prescriptions written and dispensed for controlled substances and operative procedures performed.

B. Required

documentation: Each applicant for a public service license shall submit the required fee as specified in 16.10.9.8 NMAC and the following documentation:

(1) a completed signed application, with a passport quality photo taken within the previous six months; applications are valid for one year from the date of receipt;

(2) letter of approval from the training program director.

C. Licensure

process: Upon receipt of a completed application, including all required documentation and fees, the applicant may be scheduled for a personal interview before the board, a board member designated by the board, or an agent of the board and must present original documents as requested by the board. The initial license will be issued following completion of any required interview, or approval by a member or agent of the board.

D. License expiration:

Public service licenses shall be renewed annually on September 1 as long as the applicant remains eligible. [16.10.2.13 NMAC - Rp, 16 NMAC 10.3.9, 4/18/2002; 16.10.2.13 NMAC - Rn & A, 16.10.2.12 NMAC, 1/20/2003; A, 7/1/2003; A, 4/3/2005; A, 7/1/2006; A, 10/11/2013; A, 7/12/2022]

16.10.2.14 TEMPORARY TEACHING, RESEARCH, AND SPECIALIZED DIAGNOSTIC AND TREATMENT LICENSES:

The ~~[secretary-treasurer or board-designee]~~ board may issue a temporary license to physicians licensed in other states or jurisdictions for the purpose of teaching, conducting research, performing specialized diagnostic and treatment procedures, implementing new technology, or for physician educational purposes in New Mexico on a temporary basis under the supervision of a New Mexico licensed physician. The following provisions apply:

A. Prerequisites for licensure:

The applicant must:

(1) be otherwise qualified to practice medicine in New Mexico;

(2) hold an unrestricted license in another state or country;

(3) submit the name of the sponsoring or associating physician(s), who must be actively licensed in New Mexico.

B. Required documentation:

(1) specific program or protocol of work planned;

(2) address of sponsoring institution or organization where the work will be performed;

(3) an affidavit from the sponsoring physician attesting to the qualifications of the applicant and the purpose of the functions or medical procedures the applicant will perform;

(4) verification of licensure in state or jurisdiction where physician is practicing; and

(5) a license fee as set forth in 16.10.9 NMAC.

C. Licensure process:

Upon receipt of a completed signed application, including all required documentation and fees, board staff will request and review an AMA physician profile and FSMB board action databank search. When the application is complete, a member or agent of the board will review and may approve the application. A personal interview is not required unless there is a discrepancy in the application that cannot be resolved or if there are any actions or restrictions on any license held in another state or jurisdiction.

D. The applicant may perform only those functions listed in the application. The supervising physician must notify the board and obtain approval prior to any change in the activities of the temporary license holder.

E. The duration of a temporary teaching, research, or specialized diagnostic and treatment license shall not exceed three months, provided however that the license may be renewed up to three times upon payment of appropriate fees and written justification for the plan remaining in effect. After the third renewal of a temporary license the

physician shall re-apply under the provisions of this rule.

[16.10.2.14 NMAC - Rp, 16 NMAC 10.3.8, 4/18/2002; 16.10.2.14 NMAC - Rn, 16.10.2.13 NMAC, 1/20/2003; A, 10/7/2005; A, 7/1/2006; A, 1/3/2008; A, 10/11/2013; A, 7/12/2022]

16.10.2.15 YOUTH CAMP OR SCHOOL LICENSES:

The ~~[secretary-treasurer or board-designee]~~ board may approve a temporary license for physicians to provide temporary medical services to organized youth camps or schools. Youth camp or school licenses are issued for a period not to exceed three months. Practice under the temporary license shall be limited to enrollees, leaders and employees of the camp or school. Applicants must be qualified for licensure in New Mexico and shall submit the following documentation:

A. completed signed application with a passport-quality photograph, taken within the previous six months, attached;

B. verification of current unrestricted license from state or jurisdiction where applicant is currently practicing or licensed;

C. verification of DEA permit; and,

D. a temporary license fee as set forth in 16.10.9.8 NMAC.

E. Licensure

process: Upon receipt of a completed application, including all required documentation and fees, board staff will request and review an AMA physician profile and FSMB board action databank search. When the application is complete, a member or agent of the board will review and may approve the application. A personal interview is not required unless there is a discrepancy in the application that cannot be resolved or if there are any actions or restrictions on any license held in another state or jurisdiction.

[16.10.2.15 NMAC - Rn, 16.10.2.14 NMAC, 1/20/2003; A, 10/7/2005; A, 7/1/2006; A, 1/3/2008; A, 10/11/2013; A, 7/12/2022]

**16.10.2.18 TEMPORARY
LICENSURE EXEMPTION FOR
OUT OF STATE SPORTS TEAM
PHYSICIAN:**

A. Physician who is licensed in good standing to practice medicine in another state, and who has never been disciplined by the New Mexico medical board, may practice medicine without a license provided that:

(1) the physician has a written agreement with the out-of-state sports team governing body to provide health care services to an out-of-state sports team athlete or staff member at a scheduled sporting event;

(2) the physician's practice is limited to medical care to assist injured and ill players and staff and coordinate appropriate referral to in-state health care providers as needed;

(3) the healthcare services to be provided by the physician are within the scope of practice authorized pursuant to the medical practice act and rules of the board;

(4) the physician has professional liability coverage for the duration of the sporting event.

B. Licensure exemption registration. Physician registrants shall submit the following documentation to the board:

(1) copy of the agreement with the out-of-state sports team governing body to provide health care services to an out-of-state sports team athlete or staff member at a scheduled sporting event;

(2) proof of professional liability coverage for the duration of the sporting event; and

(3) a signed affidavit that the physician will limit their medical practice in New Mexico to care and assist injured or ill out-of-state team athletes or staff, and

(4) coordinate appropriate referral to in-state health care providers.

C. The physician will further attest that they will not provide care or consultation to a

resident of New Mexico and will not practice medicine in New Mexico, outside of the sporting event.
[16.10.2.18 NMAC - N, 7/12/2022]

[16.10.2.18] 16.10.2.19

NATIONWIDE CRIMINAL HISTORY SCREENING: All applicants for initial licensure in any category in New Mexico are subject to a state and national criminal history screening at their expense. All applicants must submit two full sets of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee at the time of application.

A. Applications for licensure will not be processed without submission of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee.

B. Applications will be processed pending the completion of the nationwide criminal background screening and may be granted while the screening is still pending.

C. If the criminal background screening reveals a felony or a violation of the Medical Practice Act, the applicant/licensee will be notified to submit copies of legal documents and other related information to the board which will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.
[16.10.2.19 NMAC - Rn & A, 16.10.2.17 NMAC, 10/11/2013; Rn & A 16.10.2.18 NMAC, 7/12/2022]

[16.10.2.19] 16.10.2.20**CRIMINAL CONVICTIONS:**

Convictions for any of the following felony offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or retaining a license or certificate issued by the board:

A. homicide;
B. aggravated assault, aggravated battery, kidnapping, false imprisonment, human trafficking, stalking, or other crimes of violence against persons;

C. robbery, larceny, burglary, extortion, receiving stolen property, possession of burglary tools, unlawful taking of a motor vehicle, or other crimes involving theft or appropriation of personal property or funds;

D. rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, child solicitation, or other crimes constituting sexual offenses;

E. crimes against children; crimes involving child abuse or neglect; child sexual exploitation, child pornography;

F. driving under the influence of intoxicating liquor or drugs;

G. trafficking controlled substances;

H. fraud, forgery, money laundering, embezzlement, credit card fraud, counterfeiting, financial exploitation, or other crimes of altering any instrument affecting the rights or obligations of another;

I. making a false statement under oath or in any official document;

J. evasion of a lawful debt or obligation, including but not limited to tax obligations; or

K. an attempt, solicitation or conspiracy involving any of the felonies in this subsection.
[16.10.2.20 NMAC - N, 7/12/2022; Rn & A 16.10.2.19 NMAC, 7/12/2022]

**PUBLIC REGULATION
COMMISSION****TITLE 17 PUBLIC
UTILITIES AND UTILITY
SERVICES****CHAPTER 9 ELECTRIC
SERVICES****PART 573 COMMUNITY
SOLAR****17.9.573.1 ISSUING**

AGENCY: New Mexico Public Regulation Commission.

[17.9.573.1 NMAC - N, 07/12/2022]

17.9.573.2 SCOPE: This rule applies to investor-owned electric utilities subject to the commission's jurisdiction and to rural electric distribution cooperatives that opt into the community solar program. This rule also applies to subscriber organizations and subscribers as defined in the Community Solar Act, Subsections M and N of Section 62-16B-2 NMSA 1978.
[17.9.573.2 NMAC - N, 07/12/2022]

17.9.573.3 STATUTORY AUTHORITY: Paragraph (10) of Subsection B of Section 8-8-4 and Section 62-16B-7 NMSA 1978.
[17.9.573.3 NMAC - N, 07/12/2022]

17.9.573.4 DURATION: Permanent, unless otherwise indicated.
[17.9.573.4 NMAC - N, 07/12/2022]

17.9.573.5 EFFECTIVE DATE: July 12, 2022, unless a later date is cited at the end of a section.
[17.9.573.5 NMAC - N, 07/12/2022]

17.9.573.6 OBJECTIVES: The objectives of this rule are to implement the Community Solar Act, Section 62-16B-1 *et seq.* NMSA 1978, and to reasonably allow for the creation, financing and accessibility of community solar facilities.
[17.9.573.6 NMAC - N, 07/12/2022]

17.9.573.7 DEFINITIONS:
[RESERVED]
[17.9.573.7 NMAC - N, 07/12/2022]

17.9.573.8 LIBERAL CONSTRUCTION: If any part or application of this rule is held invalid, the remainder of its parts and any other applications of the rule shall not be affected.
[17.9.573.8 NMAC - N, 07/12/2022]

17.9.573.9 UTILITY FILINGS FOR IMPLEMENTATION OF PROGRAM: Utilities shall file all tariffs, agreements and forms necessary for implementation of the community solar program with the commission within 60 days of the

effective date of this rule.
[17.9.573.9 NMAC - N, 07/12/2022]

17.9.573.10 COMMUNITY SOLAR FACILITY REQUIREMENTS:

A. A community solar facility, excepting any native community solar project, shall:

(1) have a nameplate capacity rating of five megawatts alternating current or less;

(2) be located in the service territory of the qualifying utility and be interconnected to the electric distribution system of that qualifying utility;

(3) have at least ten subscribers;

(4) have the option to be co-located with other energy resources, but shall not be co-located with other community solar facilities;

(5) not allow a single subscriber to be allocated more than forty percent of the generating capacity of the facility; and

(6) make at least forty percent of the total generating capacity of a community solar facility available in subscriptions of 25 kilowatts or less.

B. At least thirty percent of electricity produced from each community solar facility shall be reserved for low-income subscribers and low-income service organizations. The commission will issue guidelines to ensure the carve-out is achieved each year and develop a list of low-income service organizations and programs that may pre-qualify low-income customers.

[17.9.573.10 NMAC - N, 07/12/2022]

17.9.573.11 STATEWIDE CAPACITY PROGRAM CAPS:

A. The initial statewide capacity program cap of 200 megawatts alternating current is allocated among the three qualifying utilities according to addressable market estimations, subject to further refinement, as follows:

(1) public service company of New Mexico (PNM), 125 MW;

(2) southwestern public service company (SPS), 45 MW; and

(3) El Paso electric company (EPE), 30 MW.

B. If, within one year of the receipt by a utility of the results of an initial request for proposals for community solar facilities, the initial capacity cap allocation for that utility has not been fully committed by contract, the commission may, at its discretion, apply the unused capacity to another utility on a showing of the latter utility's sufficient subscriber demand.

C. On or before April 1, 2024, the commission will commence a review of the results of the initial allocation and subscriber demand for the community solar program and a proceeding to establish a revised annual statewide capacity program cap and allocation to be in effect after November 1, 2024.

[17.9.573.11 NMAC - N, 07/12/2022]

17.9.573.12 PROCESS FOR SELECTION OF COMMUNITY SOLAR FACILITIES:

A. The commission will engage a third-party administrator to manage an unbiased and nondiscriminatory process for selection of proposed projects for building and operating community solar facilities. The commission will have no involvement in the process except to the extent that the administrator or any participant in the process may raise before the commission an issue that is not fully addressed in this rule and that the commission finds, in its discretion, that it should address.

B. Community solar facility projects shall be selected through a competitive solicitation process, with each bid meeting the following minimum requirements for eligibility:

(1) the bidder's legally binding site control;

(2) the bidder's commitment to meeting statutory subscriber minimums and not exceeding statutory maximums;

(3) the bidder's completion of a utility pre-application report or an equivalent report by the utility;

(4) the bidder's proof of access to collateral for the applicable project deposit; and

(5) the bidder's payment of a \$1000 non-refundable bid application fee to the commission.

C. The program administrator shall limit consideration of bids by any one bidder to a maximum total for such bids of twenty percent of the statewide capacity cap allocated to the applicable utility.

D. No utility shall use any information provided in the interconnection application process or any information to which the utility has superior access to gain an unfair advantage for itself or any utility-affiliated bidder in the project selection process.

E. Eligible bids shall be scored using a set of non-price factors, with each factor weighted by the number of points awarded to the factor, as follows:

(1) each bid shall be awarded to one of the following categories pertaining to permitting status, each with its own point weighting:

(a) a bid for which all necessary non-ministerial permits and approvals have been secured, based upon a permitting plan signed by a licensed engineering firm, shall be categorized as fully permitted and shall be awarded 15 points:

(b) a bid for which applications are pending for all necessary non-ministerial permits, or for which one or more permits have been granted and applications are pending for the remainder, based upon permitting plan signed by a licensed engineering firm, shall be categorized as permits known and pending and shall be awarded 10 points;

(c) a bid for which the necessary non-ministerial permits have been

identified based upon a permitting plan signed by a licensed engineering firm, but not all such permits have been applied for, shall be categorized as permits known and shall be awarded five points; or

(d) a bid for which the necessary non-ministerial permits have not been identified, based upon a permitting plan signed by a licensed engineering firm, shall be categorized as no permitting activity and shall be awarded no points.

(2) each bid shall be awarded points for having any, some, or all of the following attributes concerning the bidder's experience in developing and managing community solar projects, with the attributes being additive, not exclusive, for a range of zero to 10 potential points per bid:

(a) a bid made by a bidder composed of partners or principals having experience with subscriber recruiting and subscription management shall be awarded three points;

(b) a bid made by a bidder composed of partners or principals having experience building and operating facilities shall be awarded three points; and

(c) a bid made by a bidder composed of partners or principals having experience working directly with low-income communities shall be awarded four points.

(3) each bid shall be assigned to one of the following categories pertaining to financing status, each with its own point weighting:

(a) a bid for which financing has been secured, whether in the form of an executed commitment letter from the project financier(s) or in the form of written confirmation of executive-level approval for internal financing, shall be categorized as financing secured and shall be awarded 10 points;

(b) a bid for which financing has not

been secured but for which a detailed and feasible financing plan has been prepared shall be categorized as financing planned and shall be awarded four points; or

(c) a bid for which financing has not been secured and for which no detailed and feasible financing plan has been prepared shall be categorized as financing unplanned and shall be awarded no points.

(4) each bid shall be awarded points for having one or both of the following attributes concerning the proposed project site's viability for interconnection, with the attributes being additive, not exclusive, for a range of zero to five potential points per bid:

(a) a bid for which the proposed project site's distance to the utility's nearest three-phase line is less than one mile, as demonstrated by the utility's pre-application report or convincing alternative evidence presented by the bidder, shall be awarded two points; and

(b) a bid for which the proposed project would interconnect to a line of voltage 12 kV or higher, as demonstrated by the utility's pre-application report, shall be awarded three points.

(5) each bid shall be awarded points for including any, some, or all the following commitments beyond what is required by the statute, with the commitments being additive, not exclusive, for a range of zero to 25 potential points per bid:

(a) a bid including a commitment to exceed the statutory thirty-percent minimum level of subscription of low-income subscribers shall be awarded two points for each additional five-percent commitment above the thirty-percent minimum, up to a maximum of eight points for a commitment to a fifty-percent low-income subscription level for the proposed project;

(b) a bid including a commitment to serve a specific percentage of direct-billed low-income customers shall be

awarded two points for a ten-percent commitment and two additional points for each additional ten-percent commitment, up to a maximum of eight points for a commitment to a forty-percent subscription level of direct-billed, low-income subscribers for the proposed project;

(c) a bid including a commitment to refrain from imposing upon any potential low-income subscriber any up-front costs of subscribing, a commitment to refrain from imposing upon any potential low-income subscriber any early termination fee, and a commitment to refrain from requiring or ordering any credit check or credit report for any low-income subscriber, shall be awarded two points; and

(d) a bid including a commitment to supplement the community solar bill credit for any low-income subscriber, for a minimum period of five years, by including, in addition to the credit as calculated and provided by the utility, a credit from the subscriber organization to the subscriber in the amount of an additional twenty to thirty percent of the utility solar bill credit, shall be awarded four points for a commitment of twenty percent up to and including twenty-two percent, five points for a commitment above twenty-two percent up to and including twenty-five percent, six points for a commitment above twenty-five percent up to and including twenty-seven percent, or seven points for a commitment above twenty-seven percent up to and including thirty percent.

(6) each bid shall be awarded points for having any, some, or all of the following attributes concerning benefits to local communities, to disproportionately impacted communities, or to disadvantaged groups, with the attributes being additive, not exclusive, for a range of zero to 20 potential points per bid:

(a) a bid including a commitment to offer workforce training or educational opportunities to disproportionately

impacted communities shall be awarded six points;

(b) a bid including a commitment to contract for materials, supplies, or services only with businesses owned or operated locally or owned or operated by members of racial minorities, women, veterans, or Native Americans, shall be awarded six points;

(c) a bid including a commitment to ownership of the proposed facility by members of the local community shall be awarded two points; and

(d) a bid including evidence of and a description of an existing and continuing partnership with a tribe, pueblo, local community, or non-profit community organization shall be awarded six points.

(7) each bid shall be awarded points for having any, some, or all of the following attributes concerning the proposed project site, with the attributes being additive, not exclusive, for a range of zero to five potential points per bid:

(a) a bid for a project to be sited on a brownfield, built environment, or rooftop shall be awarded two points;

(b) a bid for a project to be sited on municipal, county, or state land shall be awarded one point; and

(c) a bid for a project that has received a favorable analysis from the department of cultural affairs or a qualified independent expert shall be awarded two points.

(8) each bid shall be categorized according to the provisions of Section 13-1-21 NMSA 1978, and shall be awarded points accordingly.

(9) The program administrator may award an additional five points to any bid that, as determined by the administrator in its discretion, includes an innovative commitment or provision beneficial to the local community, to potential subscribers, or to the program overall.

F. The program administrator shall select projects based upon these qualifications and selection criteria within each qualifying utility's territory until the allocated capacity cap for each utility has been reached.

G. For each bid selected to proceed further by the program administrator, the bidder shall pay to the commission an application fee in the amount of \$2500 for each megawatt of nameplate capacity the proposed facility is expected to have.

H. The program administrator shall identify sets of proposed projects to comprise utility-specific wait lists of proposed projects that would be eligible and able to participate in the program should a project or multiple projects be withdrawn after being selected to go forward. The wait lists shall be comprised of projects that received total scores immediately below the scores of the projects that were selected. The program administrator shall maintain a wait list for each qualifying utility, including projects with combined capacities for each utility equal to the utility's allocated capacity cap. Each bidder proposing a wait-listed project shall pay the \$2500/MW application fee within 30 days of moving from the wait list into the queue of selected projects.

I. A utility must consider interconnection applications for community solar projects that have been selected by the administrator and any projects from the wait list that replace any selected projects and need not consider interconnection applications for community solar projects that have not been selected or have not replaced selected projects. Among the group of interconnection applications for community solar projects that have been selected by the administrator or have replaced selected projects, a utility must prioritize consideration of applications in the order of ranking by points awarded to each project in the selection process. A utility shall not apply any preference for interconnection applications for

community solar projects as opposed to other types of interconnection applications, and vice-versa, regarding prioritization in the interconnection queue.
[17.9.573.12 NMAC - N, 07/12/2022]

17.9.573.13

INTERCONNECTION AND ADMINISTRATIVE COSTS:

A. The commission may determine on a case-by-case basis whether the cost of distribution system upgrades necessary to interconnect one or more community solar facilities may be eligible for some form of cost-sharing:

- (1) among subscriber organizations using the same distribution facilities;
- (2) among all ratepayers of the qualifying utility via rate base adjustments; or
- (3) among ratepayers of the same rate class as subscribers to the community solar facility via a rate rider for that class.

B. In making a determination that there are public benefits to such a cost-sharing mechanism, the commission will employ the analysis that the commission employs when considering cost sharing or rate basing grid modernization projects as defined by 71-3 NMSA 1978, the Grid Modernization Act, to make a finding that the approved expenditures are:

- (1) reasonably expected to improve the utility's electrical system efficiency, reliability, resilience and security;
- (2) reasonably expected to maintain reasonable operations, maintenance and ratepayer costs;
- (3) reasonably expected to meet energy demands through a flexible, diversified and distributed energy portfolio;
- (4) reasonably expected to increase access to and use of clean and renewable energy, with consideration given to increasing access to low-income subscribers and subscribers in underserved communities; or

(5) designed to contribute to the reduction of air pollution, including greenhouse gases.

C. The commission will consider approving sharing of interconnection costs with nonsubscribing ratepayers only to the extent that the costs borne by such ratepayers are matched or exceeded by demonstrable benefits to such ratepayers, so that there will be no subsidization of interconnection costs by nonsubscribing ratepayers in appropriate cases.

D. A utility may recover administrative costs of carrying out its responsibilities concerning the community solar program through a rate rider from which nonsubscribing ratepayers are exempt. A utility may apply to the commission to establish such a rider.
[17.9.573.13 NMAC - N, 07/12/2022]

17.9.573.14 REGISTRATION OF SUBSCRIBER ORGANIZATIONS:

A. The commission will issue a registration form that each subscriber organization shall file with the commission, that includes ownership and contact information, non-profit registration, or proof of certification to operate in New Mexico, and a general description of the project(s) proposed by the subscriber organization.

B. Each subscriber organization's ongoing authorization to operate community solar facilities shall be dependent upon the organization's compliance with the statutory thirty-percent low-income subscription minimum for each facility operated by the subscriber organization. Each subscriber organization shall report to the program administrator on a monthly basis upon the organization's progress toward meeting the requirement. Subscriber organizations that have reached the required level shall report on a quarterly basis to verify that the requirement continues to be met. Subscriber organizations that fail to reach the required level within one year of project selection may be subject, at the commission's

discretion, to penalties up to and including suspension or revocation of the subscriber organization's authorization to operate.
[17.9.573.14 NMAC - N, 07/12/2022]

17.9.573.15 SPECIAL SUBSCRIBER PROVISIONS:

A. Low-income customers who are eligible to meet the thirty percent carve out of Paragraph (3) of Subsection B of Section 62-16B-7 NMSA 1978 may be pre-qualified based on participation in any of the following programs:

- (1) Medicaid;
- (2) Supplemental Nutrition Assistance Program (SNAP);
- (3) Low-Income Home Energy Assistance Program (LIHEAP);
- (4) first-time homeowner programs and housing rehabilitation programs;
- (5) living in a low-income/affordable housing facility; or
- (6) state and federal income tax credit programs.

B. An entire multi-family affordable housing project may prequalify its entire load as a low-income subscriber.

C. A customer who does not qualify under subpart A may provisionally qualify as a low-income subscriber by signing a self-attestation that the customer's income and household size qualify the customer as a low-income subscriber, until the customer provides sufficient confirming documentation within ninety days of providing the self-attestation.

D. Low-income service organizations need only fit the special definition of this term provided in the community solar act, Subsection H of Section 62-16-2 NMSA 1978.

E. For the initial period of the program, the commission shall contract with an experienced service provider to partner with community organizations and to manage an outreach program to attract low-income subscribers to the program.
[17.9.573.15 NMAC - N, 07/12/2022]

17.9.573.16 SUBSCRIBER PROTECTIONS:

A. The commission has adopted a uniform disclosure form, identifying the information to be provided by subscriber organizations to potential subscribers, in both English and Spanish, and when appropriate, native or indigenous languages, to ensure fair disclosure of future costs and benefits of subscriptions, key contract terms, security interests and other relevant but reasonable information pertaining to the subscription, as well as grievance and enforcement procedures. The key contract terms to be disclosed on the form are subscription size (kw dc), estimated contract effective date, contract term (months or years), option to renew y/n?, enrollment costs/subscription fees, payment terms, rate discount, estimated total one year payments, early termination fees or cancellation terms, and subscription portability or transferability. The subscriber organization shall provide the form to a potential subscriber and allow them a reasonable time to review the form's disclosures and sign the form before entering into a subscription agreement. The subscriber organization shall maintain in its files a signed form for each subscriber for the duration of the subscriber's subscription, plus one year, and shall make the form available to the commission upon the commission's request.

B. The subscriber organization must maintain a minimum level of general liability insurance coverage for each facility that it operates, with the minimum level dependent upon the nameplate capacity of the facility, according to the following schedule: one million dollars per occurrence for a facility with a capacity greater than 250 kW, five hundred thousand dollars per occurrence for a facility with a capacity in the range of 40 kW - 250kW, and three hundred thousand dollars per occurrence for a facility with a capacity below 40 kW.
[17.9.573.16 NMAC - N, 07/12/2022]

17.9.573.17 SUBSCRIPTION AGREEMENTS:

Each subscriber organization shall develop and implement a written subscriber agreement containing the organization's terms and conditions for subscribing to its project.

A. The subscriber agreement must include the following terms, at a minimum:

- (1) general project information;
- (2) the effective date and term of the agreement;
- (3) identification of all charges and fees;
- (4) payment details;
- (5) information about the bill credit mechanism;
- (6) a comparison of the subscriber's net bill with and without the subscription;
- (7) the terms and conditions of service;
- (8) the process for customer notification if the community solar facility is out of service;
- (9) the customer protections provided;
- (10) contact information for questions and complaints; and
- (11) the subscriber organization's commitment to notify the subscriber of changes that could impact the subscriber.

B. The commission may consider additional required terms in a future proceeding.

C. Complaints by subscribers against subscriber organizations may be submitted to the commission's consumer relations division for informal resolution. The commission may, in its discretion, refer serious issues to the attorney general to pursue enforcement proceedings.

[17.9.573.17 NMAC - N, 07/12/2022]

17.9.573.18 CO-LOCATION OF COMMUNITY SOLAR FACILITIES:

As long as a community solar facility is not

located on the same parcel as another community solar facility, it shall not be considered co-located with another community solar facility. For any parcel that has been subdivided in the two years prior to a community solar project bid, all subdivided parcels shall be considered a single parcel for the purposes of this rule. The commission will consider, on a case-by-case basis, allowing more than one community solar facility to be located on the same parcel.

[17.9.573.18 NMAC - N, 07/12/2022]

17.9.573.19 PRODUCTION DATA:

A. The subscriber organization shall pay for a production meter to be used to measure the amount of electricity and renewable energy certificates generated by each community solar facility, whether installed by the utility or the subscriber organization. A net meter may serve as the production meter if the utility determines that there is no material onsite load at the facility.

B. The subscriber organization shall provide real-time reporting of production as specified by the utility. For a community solar facility with production capacity greater than 250 kW AC, the subscriber organization shall provide real-time electronic access to production and system operation data to the utility.

C. Production from the facility shall be reported to the subscribers by the subscriber organization on at least a monthly basis. Subscriber organizations are encouraged to provide website access to subscribers showing real-time output from the facility, if practicable, as well as historic production data.

[17.9.573.19 NMAC - N, 07/12/2022]

17.9.573.20 COMMUNITY SOLAR BILL CREDIT RATE:

A. In calculating the solar bill credit rate, the utility shall calculate the total aggregate retail rate on a per-customer-class basis, less the commission-approved distribution cost components, and

identify all proposed rules, fees and other charges converted to a kilowatt-hour rate, including fuel and power cost adjustments, the value of renewable energy attributes and other charges of a qualifying utility's effective rate schedule applicable to a given customer rate class, but does not include charges described on a qualifying utility's rate schedule as minimum monthly charges, including customer or service availability charges, energy efficiency program riders or other charges not related to a qualifying utility's power production, transmission or distribution functions, as approved by the commission, franchise fees and tax charges on utility bills;

B. The total aggregate retail rate is the total amount of a qualifying utility's demand, energy and other charges converted to a kilowatt-hour rate, including fuel and power cost adjustments, the value of renewable energy attributes and other charges of a qualifying utility's effective rate schedule applicable to a given customer rate class, but does not include charges described on a qualifying utility's rate schedule as minimum monthly charges, including customer or service availability charges, energy efficiency program riders or other charges not related to a qualifying utility's power production, transmission or distribution functions, as approved by the commission, franchise fees and tax charges on utility bills. The utility's tariff for the bill credit shall include a table specifying the components of the total aggregate retail rate, the value of the renewable energy attributes and the distribution costs to be subtracted.

C. The utility shall base its distribution cost calculation upon its most recently commission-approved cost-of-service study indexed to current value.

D. The utility shall not subtract any costs of transmission from the solar bill credit rate calculation.

E. The utility shall initially value the environmental attributes of renewable energy certificates (RECs) at the utility's

average cost of meeting its renewable portfolio standard requirement. During the utility's next base rate case, the Commission will consider whether to adopt a replacement methodology to determine the net present value of the environmental attributes of RECs necessary to reach the mandated eighty-percent renewable portfolio standard by 2040, including full environmental and distribution benefits.

[17.9.573.20 NMAC - N, 07/12/2022]

17.9.573.21 UNSUBSCRIBED ENERGY:

A. If a community solar facility is not fully subscribed in a given month, the unsubscribed energy may be rolled forward on the community solar facility account for up to one year from its month of generation and allocated by the subscriber organization to subscribers at any time during that period. At the end of that period, any undistributed bill credit shall be removed, and the unsubscribed energy shall be purchased by the qualifying utility at its applicable avoided cost of energy rate as approved by the commission.

B. The utility shall document any payments made for unsubscribed energy, including documentation of the utility's calculation of avoided cost and make such documentation available to the commission upon request. The utility may request recovery of such payments in its next base rate case.

[17.9.573.21 NMAC - N, 07/12/2022]

17.9.573.22 REPORT TO LEGISLATURE: On April 1, 2023 and April 1, 2024, qualifying utilities and subscriber organizations shall provide information to the commission relevant to the report to the legislature due on November 1, 2024. The commission will issue specific information requests no later than 45 days before each April deadline.

[17.9.573.22 NMAC - N, 07/12/2022]

HISTORY OF 17.9.573 NMAC:
[RESERVED]

REGULATION AND LICENSING DEPARTMENT BODY ART PRACTITIONERS, BOARD OF

This is an amendment to 16.36.1 NMAC, Section 7 effective 7/12/2022.

16.36.1.7 DEFINITIONS:

As used in these regulations, the following words and phrases have the following meanings, unless the context or intent clearly indicates a different meaning.

A. "Aftercare" means written instructions given to the client, specific to the body piercing or tattooing procedure(s) rendered, on caring for the body piercing or tattoo and surrounding area.

B. "Antiseptic" means an agent that destroys disease-causing microorganisms on human skin or mucosa.

C. "Apprentice" means a person who works under the direct supervision of a licensed apprentice sponsor to learn a trade from someone who is already skilled at a job.

D. "Apprentice Sponsor" means a person who is an actively licensed, skilled professional in a profession, art, craft or trade for a minimum of five years and is someone who accepts responsibility to teach an apprentice one on one.

E. "Aseptic" means the state of being free from the living disease, fermentation, or putrefaction.

F. "Autoclave" means a piece of medical equipment that employs the steam under pressure method of sterilization.

G. "Board" means the board of body art practitioners.

H. "Body art" means tattooing, body piercing, scarification, or permanent cosmetics but does not include practices that are considered medical procedures by the New Mexico medical board.

I. "Body art establishment" means a fixed or mobile place where body art is administered on the premises.

J. “Body artist”

means a person who administers body piercing, tattooing, scarification, or permanent cosmetics.

K. “Body piercing”

means to cut, stab or penetrate the skin to create a permanent hole or opening.

L. “Client”

means an individual receiving any body art procedure(s).

M. “Completed procedure” means, for the purposes of determining qualification for licensure, a tattoo, body piercing, scarification or permanent cosmetics that has been finished, including any touchups or additional work following initial healing, with the client released from service.

N. “Direct

Supervision” means the process under which an act is performed by another person with a licensed body artist or permanent makeup cosmetics professional practitioner licensed pursuant to the Body Art Safe Practices Act:

(1)

Is physically present in the establishment throughout the performance of the act;

(2)

orders, controls and accepts full professional responsibility for the act performed;

(3)

evaluates and approves the procedure performed before the client departs the care setting; and

(4)

Is capable of responding immediately if any emergency should arise.

O. “Disqualifying

Criminal Conviction” has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.

P. “Equipment”

means machinery used in connection with the operation of a body art establishment, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and other apparatuses and appurtenances.

Q. “Guest License”

means a person temporary authorized to administer tattooing, body piercing-scarification, or permanent cosmetics

for a period of 30 days from date license issued.

R. “Instruments used for body art” means hand pieces, needles, needle bars and other items that may come into contact with a person’s body during the administration of body art.

S. “Jurisprudence Examination” means the examination given regarding the laws, rules and regulations, which relate to the practice of body art in the state of New Mexico.

T. “License” has the same meaning as defined in Paragraph (1) of Subsection F of Section 61-1-34 NMSA 1978.

U. “Licensing fee” has the same meaning as defined in Paragraph (2) of Subsection F of Section 61-1-34 NMSA 1978.

V. “Military service member” has the same meaning as defined in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.

W. “Operator” means the owner of a body art establishment.

X. “Permanent Cosmetics Practitioner” means a person [~~who tattoos eyeliner, eyebrows~~], [~~lip liner, full lip color, and repigmentation or camouflage on the face, using tattooing techniques of placing pigments under the skin.~~] who uses tattoo techniques of placing pigment under the skin for cosmetic purposes to restore or enhance a person’s appearance, with any manual device or machine used for tattooing.

Y. “SDS” means safety data sheet(s) used to communicate the hazards of hazardous chemical products which may be found in a body art establishment.

Z. “Sharps” means any sterilized object that is used for the purpose of penetrating the skin or mucosa, including needles, scalpel blades and razor blades.

AA. “Single use” means products or items that are intended for one-time, one-person use and are disposed of after use on each client, including cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary

coverings, razors, piercing needles, scalpel blades, stencils, ink cups and protective gloves.

BB. “Special Event”

means an event where procedures will be performed and will not be conducted at a licensed establishment.

CC. “Sterilization”

means destruction of all forms of macrobiotic life, including spores.

DD. “Substantially Equivalent” means the determination by the board that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to, or exceed the education, examination, and experience requirements of the Body Art Safe Practice Act.

EE. “Supervising

Licensee” means licensed practitioner who manages the licensed body art establishment. This may or may not be the operator.

FF. “Veteran” has the same meaning as defined in Paragraph (4) of Subsection F of Section 61-1-34 NMSA 1978.
[16.36.1.7 NMAC - Rp, 16.36.1.7 NMAC, 2/4/2016; A, 6/21/2018; A, 2/3/2022, A, 7/12/2022]

REGULATION AND LICENSING DEPARTMENT BODY ART PRACTITIONERS, BOARD OF

This is an amendment to 16.36.2 NMAC, Sections 8, 9, 10, 11, 13, 15, 22 and 23, effective 7/12/2022.

16.36.2.8 APPRENTICE LICENSE APPLICATION FOR BODY ART TATTOO:

A. Application forms: (1)

Application for any license to be issued or renewed by the board shall be made on the official form provided by the board for that purpose. Incomplete applications will be returned. Designated deadlines will apply to resubmitted applications. All applications are valid for one year from date received.

(2)
Applications for apprentice licensure must include:

(a) non-refundable application fee;
(b) a completed and signed application;
(c) applicant name;
(d) ~~[proof of age indicating applicant is at]~~ must be at least 18 years of age ~~[(government-issued identification with a photo)]~~;
(e) current electronic mail address;
(f) current phone number;
(g) name, address and phone number of licensed establishment where apprenticeship will be conducted. Establishment license must be current upon receipt of application.

(h) an apprentice sponsorship application which must be completed and signed by a body art practitioner who meets the requirements within 16.36.2.9 NMAC and is licensed in the kind of body art the applicant is seeking an apprenticeship license;

(i) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.2.13 NMAC; and

~~[(j)]~~ proof of current immunizations as defined in 16.36.2.12 NMAC; and

~~[(k)]~~ (j) proof of any disqualifying criminal convictions as defined in 16.36.4.9 NMAC.

B. Photographs:

Applicants for original licensure shall attach a recent passport size, color photograph, front-view of face.

C. Prior to licensure the applicant shall take and pass a board approved jurisprudence examination. The applicant must pass the jurisprudence exam with a minimum score of seventy-five percent or higher.

D. An apprentice must remain under the direct supervision of their sponsor until all requirements

have been met or the apprentice license has been terminated by the board.

E. Renewal of a body art apprentice license:

(1) License will expire one year after date of issue;
(2) Timely renewal of license(s) is the full and complete responsibility of the licensee. Failure to renew the license by the expiration date will result in a late fee.

(3) Licensees shall renew a body artist apprentice license on or before the expiration date if needed to complete their current apprenticeship.

(4) Renewal of apprentice license shall include the following information:

(a) name of apprentice sponsor;

(b) name of establishment and address where apprenticeship will be conducted, establishment license must be current upon receipt of application.

(c) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.2.13 NMAC;

~~[(d)]~~ proof of current immunizations as defined in 16.36.2.12 NMAC; and

~~[(e)]~~ (d) proof of any disqualifying criminal convictions as defined in 16.36.4.9 NMAC.

[16.36.2.8 NMAC - Rp, 16.36.2.8 NMAC, 6/21/2018, A, 2/3/2022; A, 7/12/2022]

16.36.2.9 SPONSOR LICENSE APPLICATION FOR BODY ART TATTOO:

A. A licensee may be approved to sponsor only one body art tattoo, apprentice at a time. Incomplete applications will be returned. All applications are valid for one year from date received. A complete application includes:

(1) non-refundable application fee;
(2) a current New Mexico body art tattoo, license;

(3) documentation of legally practicing body art tattooing ~~[, in New Mexico]~~ for at least five years without any disciplinary action;

(4) a curriculum must be submitted on the form provided by the board. An approved basic fundamental curriculum shall include the following requirements as required in 16.36.2.15 NMAC ~~[to the board staff for approval]~~; curriculum shall include references and resources to be used and methods of evaluation for each area covered; ~~[and]~~

(5) name, address and phone number of licensed establishment where apprenticeship will be conducted. Establishment license must be active upon receipt of application;

(6) proof of any disqualifying criminal convictions as defined in 16.36.4.9 NMAC;

B. Photographs:

Applicants for sponsor licensure shall attach a recent passport size, color photograph, front-view of face.

C. Upon approval of application, a board approved log will be available to record progress during the apprenticeship. This log will serve as proof of completion of training program. ~~[The sponsor shall submit a completed log to the board administrator on the first day of each month showing the previous month progress report.]~~

D. Upon completion of the apprenticeship program, the sponsor and apprentice shall submit the apprentice log to the board administrator. The signed log shall be sent to the board within 15 days and shall include a sworn statement made under penalty of perjury, from the sponsor and the apprentice stating the apprenticeship has been completed. The sponsor will give a copy of the signed log and statement to the apprentice.

E. The apprentice will then receive notification from the board stating the apprentice is eligible to take the national theory exam.

F. Renewal of body art apprentice sponsor license:

(1) License will expire one year after date of issue;

(2) Timely renewal of license(s) is the full and complete responsibility of the licensee. Failure to renew the license by the expiration date will result in a late fee.

(3) Licensees shall renew a body artist tattoo apprentice sponsor license on or before the expiration date if needed to complete their current apprenticeship.

(4) Renewal of apprentice license shall include the following information:

(a) name of apprentice;

(b) name of establishment and address where apprenticeship will be conducted, establishment license must be active upon receipt of application; and

(c) proof of any disqualifying criminal convictions as defined in 16.36.4.9 NMAC; [16.36.2.9 NMAC - Rp, 16.36.2.9 NMAC, 6/21/2018, A, 2/3/2022; A, 7/12/2022]

16.36.2.10 APPLICATION FOR BODY ART TATTOO PRACTITIONER LICENSE:

A. Application forms:

(1) Applications shall be made on the official form provided by the board. Incomplete applications will be returned. All applications are valid for one year from date received. All fees are non-refundable.

(2) Applications for licensure must include:

(a) a completed and signed application;

(b) applicant name;

(c) date of birth;

(d) [proof of age indicating applicant is] must be at least 18 years of age [(government-issued identification with a photo)];

(e) establishment mailing address;

(f) phone number;

(g) name, address and phone number of licensed establishment where services will be performed. Establishment license must be current upon receipt of application;

(h) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.2.13 NMAC;

~~[(i)]~~ proof of current immunizations as defined in 16.36.2.12 NMAC;

~~[(j)]~~ (i) proof of any disqualifying criminal convictions as defined in 16.36.4.9 NMAC;

~~[(k)]~~ (i) proof of completion of tattoo [~~scarring, scarification, or permanent cosmetics~~] training program and examination as defined in 16.36.2.14 NMAC.

~~[(l)]~~ (k) a recent passport size, color photograph; and

~~[(m)]~~ (l) non-refundable application fee as required by the board.

~~[(n)]~~ Photographs: applicant for tattoo artist license must include a minimum of 10 original photographs of healed tattoos, which the applicant has personally performed.]

~~[(o)]~~ B. The applicant shall take and pass a written examination approved by the board and the board approved jurisprudence examination. The applicant must pass the exams with a minimum score of seventy-five percent or higher.

~~[(p)]~~ C. Renewal of a practitioner license:

(1) License will expire one year after date of issue;

(2) Timely renewal of license(s) is the full and complete responsibility of the licensee. Failure to renew the license by the expiration date will result in a late fee;

(3) Licensees shall renew their license on or before the expiration date;

(4) Renewal of license shall include the following information:

(a) name and address of establishment. Establishment license must be current upon receipt of application;

(b) name of establishment operator or supervisor;

(c) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.2.13 NMAC;

~~[(d)]~~ proof of current immunizations as defined in 16.36.2.12 NMAC; and

~~[(e)]~~ (d) proof of any disqualifying criminal convictions as defined in 16.36.4.9 NMAC. [16.36.2.10 NMAC - Rp, 16.36.2.10 NMAC, 6/21/2018; A, 2/3/2022; A, 7/12/2022]

16.36.2.12 [PROOF OF CURRENT IMMUNIZATIONS:]

~~Proof shall be provided upon request of the board or board representative that apprentice, practitioner, and permanent cosmetic practitioner license has either completed or declined, on a form provided by the board, the hepatitis B vaccination series. For those who decline the hepatitis B vaccination series, an information brochure developed by the New Mexico department of health will be provided which explains the risks of hepatitis B and C.]~~

RESERVED

[16.36.9.11 NMAC – N, 1/11/2022; Repealed, 7/12/2022]

16.36.2.13 PROOF OF COMPLETION OF TRAINING PROGRAM:

Proof shall be provided with the original application that the applicant has, at a minimum, completed the following training prior to making application for a license as a body artist apprentice, body artist practitioner, such training must include:

A. a board approved blood borne pathogens training course that meets OSHA (occupational safety and health administration) standards and CDC (center for disease control) recommendations. The training course shall include an examination as a condition of the training completion. The training must be completed within 12 months prior to application and annually thereafter. The training may be obtained through any of the following:

- (1) nationally accredited organization;
- (2) local government sponsored;
- (3) hospital sponsored;
- (4) college sponsored;
- (5) OSHA sponsored;
- (6) red cross; or
- (7) board approved.

B. Current certification in first aid and cardiopulmonary resuscitation (CPR). The training shall be obtained through any of the following:

- (1) nationally accredited organization;
- (2) local government sponsored;
- (3) hospital sponsored;
- (4) college sponsored;
- (5) OSHA (occupational safety and health administration) sponsored;
- (6) red cross; or
- (7) board approved;

~~[(C.) An applicant for a tattoo or body piercing-scarification apprenticeship shall file an apprentice agreement signed under penalty of perjury, by all parties that applicant shall complete the board required training requirements.]~~

[16.36.2.13 NMAC - Rp, 16.36.2.13 NMAC, 6/21/2018, A, 2/3/2022; A, 7/12/2022]

16.36.2.15 TATTOO APPRENTICESHIP TRAINING AND EXAMINATION REQUIREMENTS:

A. Upon successful completion of apprenticeship program, an applicant for original tattoo practitioner license shall provide proof, acceptable to the board or its designee, that applicant has completed an apprenticeship program under the direct supervision of a licensed practitioner with instruction and experience in the kind of body art for which the applicant seeks a body art practitioner license.

B. Proof of completing an apprentice program shall ~~[include:~~ ~~(1) verification of completion of apprenticeship program on a]~~ be submitted on a log provided by the board ~~[-and~~ ~~(2) a minimum of 10 original photographs of healed tattoos which the artisan has personally performed and a minimum of three signed testaments from previous clients.]~~

C. Tattoo apprenticeship curriculum; 1400 hours

- (1) Orientation - 100 hours:
 - (a) state laws and regulations;
 - (b) tax and business license requirements;
 - (c) OSHA blood borne pathogens standard;
 - (d) the establishment's exposure control plan;
 - (e) SDS sheets;
 - (f) paperwork and business documentation;
 - (g) HIPAA (Health Insurance Portability and Accountability Act of 1996 privacy rule);
 - (h) environment/appropriate studio set-up;
 - (i) professional image;

(j) appropriate communication with clients;

(k) ethics and legalities;

(i) minors;

(ii) drugs and alcohol;

(iii) medical conditions/risk assessment; and

(iv) personal boundaries.

(1) Dealing with emergencies:

(i) blood spills;

(ii) fainting;

(iii) bleeding;

(iv) needlesticks; and

(v) other exposures.

(2) Sterilization, disinfection theory and practical - 100 hours:

(a) microbiology;

(b) definitions;

(c) microorganisms of the skin;

(d) factors that influence the survival and growth of microorganisms;

(e) breaking the chain of infection;

(f) infection control;

(g) handwashing;

(h) types of soaps and hand sanitizers;

(i) use of gloves and other personal protective equipment;

(j) how to recognize, prevent and remedy cross-contamination;

(k) immunizations;

(l) cleaning, disinfection and sterilization;

sterile chart;	(m)	sharps disposal;	(p) (r)	needle depth and machine/hand speed coordination;	(j)
cleaning/appropriate procedures;	(n)	reusable equipment;	(q) (s)		(k)
implement pre-cleaning before sterilization/appropriate use of cleaning solutions and ultrasonic cleaners;	(o)	storage;	(r) (t)	dealing with mistakes;	(l)
disinfection/appropriate use and disposal of disinfecting solutions; and	(p)	tattoo equipment maintenance;	(s) (u)	bandaging techniques; and	(m)
sterilization/appropriate use and maintenance of autoclave sterilizers.	(q)	understanding the electromagnetic tattoo machine and its history;	(t) (v)	in order to be approved practical work must include a minimum of 50 completed procedures, for the purposes of determining qualifications for licensure under this rule.	
(3) Tattooing observation/theory - 200 hours:	(3)	liner/shader set-up;	(u) (w)	Completed procedure means a tattoo which has been finished on a live human being, including any touchups or additional work following initial healing and the client is released from service.	
artistic development;	(a)	quality and conductivity of metals used in tattoo machines;	(v) (x)		
drawing for clients;	(b)	spring gauges and maintenance;	(w) (y)		
stencil making and application;	(c)	the difference between long stroke/short stroke technique;	(x) (z)		
color theory/understanding the color wheel;	(d)	tattoo machine schematics, electronics and constructions;	(y) (aa)		
line quality and proportion;	(e)	tuning and adjustment of machines;	(z) (bb)		
shading and coloring technique;	(f)	understanding current/voltage and reciprocation response;	(aa) (cc)		
pigments and color mixing;	(g)	needle-making safety and construction; and	(bb) (dd)		
portfolio construction and maintenance;	(h)	aftercare.	(cc) (ee)		
anatomy;	(i)	(4) Tattooing observation/practical - 1000 hours:			
understanding of skin;	(j)	proper use of safety procedures outlined in theory training;	(a)		
parts and functions of skin;	(k)	aseptic technique;	(b)		
<u>Surgically modified skin and scar tissue.</u>	(l)	room set-up and break-down;	(c)		
<u>Compromised skin from medical procedure, such as radiation and chemotherapy.</u>	(m)	skin preparation;	(d)		
determining the appropriateness of a tattoo placement;	(t) (n)	client relations/relaxation techniques;	(e)		
equipment;	(m) (o)	pain management;	(f)		
disposable supplies;	(n) (p)	tattooing techniques;	(g)		
needles;	(o) (q)	line quality and solid color techniques;	(h)		
		pigment and implementation selection and use;	(i)		

D. An applicant for a body art tattoo practitioner license shall take the tattoo ~~[or body piercing-scarification]~~ examination approved by the board with a minimum passing score of seventy-five percent or higher. A candidate who does not meet this score can retest up to two times. A candidate who does not pass the written examination must wait at least seven days before retesting. Any candidate who does not meet the minimum passing score after three attempts shall be required to enroll or re-enroll in an apprentice program.

E. Individuals who have been approved to take the written examination will have 12 months from approval date to take the examination and get licensed through the board.
[16.36.2.15 NMAC - N, 6/21/2018; A, 7/12/2022]

16.36.2.22 CREDIT GRANTED FOR SUBSTANTIALLY EQUIVALENT TRAINING AND EXPERIENCE:

~~[A. — An applicant for licensure as a body artist may be granted credit for training and experience obtained from any source, whether within or outside New Mexico, if the applicant demonstrates to the satisfaction of the board that the applicant's training and experience is substantially equivalent to the training and experience required under the applicable provisions of the Body Art~~

Safe Practices Act and the regulations promulgated by the board pursuant to the Act. The applicant shall apply for licensure as a body artist on an official form approved by the board obtained from the Department for that purpose, and shall meet the following minimum requirements in addition to those set forth in subsections A through C of this section 16.36.2.17-NMAC:

B. An applicant for licensure as a body artist may be granted credit for training and experience obtained from any source, whether within or outside New Mexico, if the applicant demonstrates to the satisfaction of the board that the applicant's training and experience is substantially equivalent to the training and experience required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act. The applicant shall apply for licensure as a body artist on an official form approved by the board obtained from the Department for that purpose, and shall meet the following minimum requirements in addition to those set forth in subsections A through C of this section 16.36.2.17-NMAC:

(1) a certified copy of a current tattoo or body artist license from the other state or jurisdiction or provided that the board shall grant credit for training and experience obtained from any source;

(2) a current copy of the rules and regulations pertaining to tattooing, body piercing, scarification, and permanent cosmetics from the other state or jurisdiction;

(3) a letter of licensure verification mailed by the licensing authority from the other state or jurisdiction to the board which shall include:

(a) verification that the applicant holds a valid and unexpired license;

(b) the license issuance date;

(c) the license expiration date;

(d) a

statement as to whether the applicant has ever been subject to discipline or if there are any complaints or investigations pending against the licensee; and

(e) upon the request of the board, a written consent from the applicant allowing the board or its designee to examine disciplinary, complaint, or investigative records of the other licensing authority.

(f) proof of disqualifying criminal convictions as defined in 16.36.4.9-NMAC;

C. An applicant seeking credit for training and experience obtained as a licensed tattoo or body artist in a state or jurisdiction outside New Mexico whose licensing requirements are less stringent than those in effect in New Mexico shall be required to meet the requirements of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act.

(1) If the applicant's training and experience is from a state or jurisdiction outside New Mexico, the applicant shall demonstrate to the satisfaction of the board that all of the following requirements are met:

(2) the applicant was authorized by law to perform tattooing, body piercing, scarification, or permanent cosmetics without limitation in the state or jurisdiction during the time period the applicant obtained the training and experience;

(3) the applicant has been a tattoo or body artist who has performed tattooing, body piercing, scarification, and permanent cosmetics in that state or jurisdiction immediately prior to applying for licensure as a body artist in New Mexico; and

(4) the applicant shall submit to the board:

(a) three letters of recommendation from a licensed tattoo or body artist in good standing in New Mexico or another state or jurisdiction;

(b) twenty color photographs of completed procedures by the applicant, demonstrating the applicant's ability, knowledge, and fitness to tattooing, body piercing, scarification, and permanent cosmetics procedures effectively and in a safe and healthy environment;

(c) CPR, First Aid and blood borne pathogen certificates issued to the applicant within six months immediately preceding the application for licensure;

(d) affidavits from prior employers or supervisors;

(e) W-2 or 1099 forms; and

(f) federal or state tax returns verifying occupational status.

D. If the applicant's training and experience was not obtained as a licensed tattoo or body artist in a state or jurisdiction outside New Mexico, or through an apprenticeship or training program from a state or jurisdiction outside New Mexico, the applicant shall demonstrate to the satisfaction of the board that all of the following minimum requirements are met. For the board to approve an apprenticeship or training program from a state or jurisdiction outside New Mexico, the applicant must submit satisfactory evidence to the board or its designee of the following:

(1) the apprenticeship or training program was licensed or accredited for that purpose by a state agency;

(2) the applicant successfully completed the apprenticeship or training program, as shown by an official transcript or certificate of completion;

(3) during the applicant's participation in the apprenticeship or training program, the applicant's sponsor or trainer was licensed and in good standing as a tattoo or body artist in the state or jurisdiction where the apprenticeship or training was completed;

(4) the applicant completed the apprenticeship or training program under the direct supervision of the sponsor or trainer in a state-approved program for tattoo or body artists;

(5) the apprenticeship or training program covered the areas of theory and practical experience required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act;

(6) if the apprenticeship or training program completed in another state or jurisdiction included hours allotted to studying the laws and regulations of that state or jurisdiction, the board in its sole discretion may count those hours toward the required number of hours allotted to studying New Mexico laws and regulations; and

(7) the apprenticeship or training program included the total number of hours of theory and practical experience and the number of completed procedures required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act.]

A. An applicant for licensure as a body artist may be granted credit for training and experience obtained from any source, whether within or outside New Mexico. The applicant's training and experience meets the training and experience required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act.

B. An applicant licensed in another state or jurisdiction shall submit the following requirements:

(1) completed and signed application;

(2) non-refundable application fee;

(3) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.2.13 NMAC;

(4) verifications of licensure mailed by the licensing authority from the other state or jurisdiction to the board which shall include:

(a) verification that the applicant holds a valid and unexpired license;

(b) the license issuance date;

(c) the license expiration date;

(d) a statement as to whether the applicant has ever been subject to discipline or if there are any complaints or investigations pending against the licensee; and

(e) upon the request of the board, a written consent from the applicant allowing the board or its designee to examine disciplinary, complaint, or investigative records of the other licensing authority;

(5) proof of any disqualifying criminal conviction as defined in 16.36.4.9 NMAC; and

(6) jurisprudence exam with a passing score of seventy-five percent or higher.

C. An applicant seeking credit for training and experience obtained as a body artist in a state or jurisdiction outside New Mexico whose licensing requirements are less stringent than those in effect in New Mexico shall be required to meet the following requirements:

(1) completed and signed application;

(2) non-refundable application fee;

(3) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.2.13 NMAC;

(4) proof of practice equivalent to the hours of training defined in 16.36.2.15 NMAC

(a) W-2 or 1099 forms; or

(b) federal or state tax returns verifying occupational status.

(5) jurisprudence exam with a passing

score of seventy-five percent or higher.

(6) proof of any disqualifying criminal conviction as defined in 16.36.4.9 NMAC.

D. If the applicant training and experience does not meet the training and experience required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act, the board may request additional requirements outlined in 16.36.2.23 NMAC.

[16.36.2.22 NMAC - N, 2/3/2022; A, 7/12/2022]

16.36.2.23 ADDITIONAL TRAINING REQUIREMENTS:

If the board determines that an applicant's training and experience is not substantially equivalent to the training and experience required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act, it may require:

(1) the applicant to complete additional [course-work] training before proceeding with the application process; and

(2) [the applicant to meet any other requirements as may be prescribed by the board, including a practical exam or an apprenticeship program:] an examination approved by the board outlined in 16.36.2.15 NMAC.

[16.36.2.23 NMAC - N, 2/3/2022, A, 7/12/2022]

REGULATION AND LICENSING DEPARTMENT BODY ART PRACTITIONERS, BOARD OF

This is an amendment to 16.36.3 NMAC, Section 8 effective 7/12/2022.

16.36.3.8 REQUIREMENTS FOR ESTABLISHMENT:

A. All walls and floors of a body art establishment shall be washable and in good repair. Walls

and floors shall be maintained in a clean condition. All surfaces, including client chairs and benches shall be of such construction as to be easily cleaned and sanitized after each client procedure. All body art establishments shall be completely separated from any other business or non-business using floor-to-ceiling walls and doors. Rooms where body art procedures occur shall be free from debris or any safety hazards and shall not be used for storage.

B. Establishments located within or at a private residence must meet zoning requirements. An establishment located in or at a private residence shall meet establishment requirements as stated in 16.36.3.8 NMAC.

C. There shall be a minimum of 40 square feet of floor space for each procedure room. Each body art establishment shall have an area that may be screened from public view for clients requesting privacy. Multiple procedure rooms shall be separated by clean, non-porous and washable dividers, curtains or partitions, which shall be maintained with an EPA registered disinfectant.

D. The body art establishment shall be well-ventilated and provided adequate artificial light.

E. No animals of any kind shall be allowed in an establishment, except service animals used by persons with limitations as defined in the Americans with Disabilities Act. Aquariums are allowed, but not within a procedure room.

F. A separate, readily accessible, hand sink with hot and cold running water, under pressure, preferably equipped with wrist or foot operated controls and supplied with liquid [antimicrobial] soap and disposable paper towels shall be readily accessible within the body art establishment. One hand sink shall serve no more than three operators. In addition, there shall be a minimum of one lavatory, excluding any service sinks, and one toilet in a body art establishment.

G. At least one covered waste receptacle shall be provided

in each operator area and each toilet room. Receptacles in the operator area shall be emptied daily and solid waste shall be removed from the premises at least weekly. Receptacles in the operator area shall either have a foot operated lid or a lid that can and shall remain open during body art procedures to prevent hand contact with the receptacle during a procedure. All refuse containers shall be cleanable and kept clean.

H. All instruments and supplies shall be stored in clean dry covered containers.

I. If reusable cloth items, including but not limited to lap-cloths, are used, they shall be mechanically washed after each client procedure. Reusable cloth items shall be mechanically washed with detergent and dried. The cloth items shall be stored in a clean dry environment.

J. The following information shall be kept on file on the premises of a body art establishment and available for inspection by the board:

(1) the full names of all employees in the establishment and their exact duties;

(2) the board-issued license with identification photograph;

(3) the body art establishment name and hours of operation;

(4) the name and address of the body art establishment owner;

(5) a complete description of all body art performed;

(6) maintenance of a [material] safety data sheet [(MSDS)] (SDS) file containing pertinent information regarding products; and

(7) a copy of the Body Art Safe Practices Act and current rules.

K. An operator shall notify the board in writing not less than 30 days before changing the location of a body art establishment. The notice shall include the street address of the new location.

[16.36.3.8 NMAC - Rp, 16.36.3.8

NMAC, 2/4/2016; A, 6/21/2018; A, 7/12/2022]

REGULATION AND LICENSING DEPARTMENT BODY ART PRACTITIONERS, BOARD OF

This is an amendment to 16.36.5 NMAC, Sections 8 and 9 effective, 7/12/2022.

16.36.5.8 STANDARDS OF PRACTICE AND PROFESSIONAL STANDARDS:

Practitioners are required to comply with the following minimum standards.

A. A practitioner shall perform all body art procedures in accordance with universal precautions set forth by occupational health and safety administration (OSHA) and the United States centers for disease control.

B. Smoking, eating, or drinking by anyone is prohibited in the procedure room while body art preparation, procedure and clean-up is being performed.

C. A practitioner shall refuse service to any person who, in the opinion of a reasonable objective observer, may be under the influence of alcohol or drugs.

D. A practitioner shall maintain the highest degree of personal cleanliness, conform to best standard hygienic practices, and wear clean clothes when performing body art procedures. Before performing body art, the licensee must thoroughly wash their hands in hot running water with liquid antimicrobial soap, then rinse hands and dry with disposable paper towels. This shall be done as often as necessary to remove contaminants.

E. The skin of the licensee shall be free of rash or infection. No licensee affected with boils, infected wounds, open sores, abrasions, weeping dermatological lesions or acute respiratory infection shall work in any area of a body art establishment in any capacity in

which there is a likelihood that that person could contaminate body art equipment, supplies, or working surfaces with body substances or pathogenic organisms.

F. In performing body art procedures, a practitioner shall wear disposable single-use gloves. The gloves shall be discarded, at a minimum, after the completion of each procedure on an individual client, and hands shall be washed in accordance with Subsection D before the next set of gloves is put on. Under no circumstances shall a single pair of gloves be used on more than one person. The use of disposable single-use gloves does not preclude or substitute for hand washing procedures as part of a good personal hygiene program.

G. If, while performing body art, the licensee's glove is pierced, torn, or otherwise contaminated by contact with any unclean surfaces or objects or by contact with a third person, the procedures in Subsections D and E above shall be repeated immediately. Any item or instrument used for body art which is contaminated during the procedure shall be discarded and replaced immediately with new sanitary items or instrument before the procedure resumes.

H. Contaminated waste, which may release liquid blood or body fluids when compressed or may release dried blood or body fluids when handled must be placed in an approved "red" bag which is marked with the international "biohazard" symbol. It must then be disposed of by an approved medical waste facility pursuant to federal and state regulations including but not limited to 29 CFR 1910.1030 and New Mexico solid waste management regulations promulgated by the New Mexico environment department. Sharps ready for disposal shall be disposed of in approved sharps containers. Contaminated waste which does not release liquid blood or body fluids when compressed or does not release dried blood or body fluids when handled may be placed in a covered receptacle and disposed

of through normal, approved disposal methods. Storage of contaminated waste on-site shall not exceed 90 days. Establishment shall maintain records of waste removal.

I. Petroleum jellies, soaps, and other products used in the application of stencils shall be dispensed and applied on the area to receive a body art procedure with sterile gauze or other sterile applicator to prevent contamination of the original container and its content. The applicator or gauze shall be used once and then discarded.

J. It is the responsibility of the operator of the body art establishment to be in possession of the most current regulations and aftercare instructions.

K. Jewelry inserted into a newly pierced area must be [made surgical implant-grade stainless steel that is ASTM F138-compliant; solid 14k or 18k white or yellow gold, niobium (Nb), titanium (Ti6A4V ELI) that is ASTM F136-compliant, platinum; or a dense, low-porosity plastic, which is free of nicks, scratches, or irregular surfaces and has been properly sterilized prior to use.] the appropriate length and diameter for the unique anatomy and placement of the piercing. Materials appropriate to wear in a fresh body piercing must be able to withstand the heat and pressure of an autoclave sterilization and compatible with the body to prevent irritation, allergy, or infection. Materials must be to the specific grade of metal designated by code through the American Society for Testing and Materials Standards (ASTM), the International Organization for Standardization (ISO) or to the standards listed below:

(1) surgical steel should meet on or more of the following criteria:

(a)

ASTM F-138

(b)

ISO 5832-1

(c)

ISO 10993-6

(d)

ISO 10993-10

(e)

ISO 10993-11; or

(f)
EEC Nickel Directive compliant.

(2) titanium;

(a)

ASTM F-136;

(b)

ASTM F-1295;

(c)

ISO 5832-3; or

(d)

commercially pure titanium that is ASTM F-67 compliant.

(3) niobium;

(4) gold that is

14k to 18k, nickel-free, cadmium-free

and alloyed for biocompatibility. Gold

plated, gold-filled, or fold overlay/

vermeil jewelry is not acceptable for

fresh piercing.

(5) platinum;

(6)

biocompatible polymers;

(7) glass;

(a)

fused quartz glass;

(b)

lead-free borosilicate; or

(c)

lead free soda-lime glass.

[16.36.5.8 NMAC - Rp, 16.36.5.8

NMAC, 2/4/2016; A, 7/12/2022]

16.36.5.9 STERILE PROCEDURES AND SANITATION:

A. All non-disposable instruments used for body art shall be cleaned thoroughly after each use by scrubbing with [an antimicrobial] a liquid soap solution and hot water or an appropriate disinfectant to remove blood and tissue residue and placed in an ultrasonic unit which shall remain on the premises of the body art establishment and which will be operated in accordance with the manufacturer's instructions.

B. All facilities that reprocess reusable instruments shall have an equipment cleaning room that is physically separated from the work stations. Facilities that use all disposable equipment shall be exempt from this requirement.

C. After cleaning, all non-disposable instruments used for body art shall be packed individually in paper peel-packs and sterilized.

All paper peel-packs shall contain either a sterilizer indicator or internal temperature indicator. Properly packaged, sterilized and stored equipment can be stored no more than one year. Paper peel-packs must be dated with an expiration date not to exceed one year. Sterile equipment may not be used after the expiration date without first repackaging and resterilizing.

D. All non-disposable instruments used for body art shall be sterilized in an autoclave at the body art establishment. Off-site sterilization is prohibited. The sterilizer shall be used, cleaned, and maintained according to manufacturer's instructions. A copy of the manufacturer's recommended procedures for the operation of the sterilization unit must be available for inspection by the board.

E. Each holder of a license to operate a body art establishment shall demonstrate that the sterilizer used is capable of attaining sterilization by monthly spore destruction tests. These tests shall be verified through an independent laboratory. These test records shall be retained by the operator for a period of three years and provided to the board upon request.

F. After sterilization, the instrument used for body art, tattooing or body piercing shall be stored in a dry, clean cabinet or other tightly covered container reserved for the storage of such instruments.

G. All instruments used for body art, tattooing or body piercing shall remain stored in sterile packages until just prior to performing a body art procedure. When assembling instruments used for performing body art, the operator shall wear disposable medical gloves and use techniques to ensure that the instruments and gloves are not contaminated.

H. All inks, dyes, pigments and sharps shall be specifically manufactured for performing body art procedures and shall not be adulterated. Immediately before applying a tattoo, the quantity

of the dye to be used for the tattoo shall be transferred from the bottle and placed into sterile, single use paper cups or plastic caps. Upon completion of the tattoo, these single cups or caps and their contents shall be discarded.

I. For body piercing and tattooing establishments primarily utilizing a Statim autoclave, reusable items shall be sterilized in an autoclave in a bulk load without sterilization pouches, previous to sterilization in the Statim autoclave, for the body piercing or tattoo procedure. Reusable instruments and single use items sterilized in a Statim autoclave cassette must be used immediately after opening the Statim autoclave cassette. The items contained in the Statim autoclave cassette shall be used for one client only and shall include use of an integrater strip.

[16.36.5.9 NMAC - Rp, 16.36.5.9 NMAC, 2/4/2016; A, 7/12/2022]

REGULATION AND LICENSING DEPARTMENT BODY ART PRACTITIONERS, BOARD OF

This is an amendment to 16.36.9 NMAC, Sections 8, 9, 10, 11, 12, 13, 15 and 16 effective, 7/12/2022.

16.36.9.8 APPRENTICE LICENSE APPLICATION FOR PERMANENT COSMETICS PRACTITIONER:

A. Application forms: **(1)**

Application for any license to be issued or renewed by the board shall be made on the official form provided by the board for that purpose. Incomplete applications will be returned. Designated deadlines will apply to resubmitted applications. All applications are valid for one year from date received.

(2)

Applications for apprentice licensure must include:

(a)

non-refundable application fee;

(b) a

completed and signed application;

(c)

full applicant name;

(d)

[~~proof of age indicating applicant is~~] applicant must be at least 18 years of age [~~(government-issued identification with a photo)~~];

(e)

current electronic mail address;

(f)

current phone number;

(g)

name, address and phone number of licensed establishment where apprenticeship will be conducted. Establishment license must be current upon receipt of application.

(h)

an apprentice sponsorship application which must be completed and signed by a body art practitioner who meets the requirements within 16.36.9.9 NMAC and is licensed in the kind of body art the applicant is seeking an apprenticeship license;

(i)

copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.9.13 NMAC; and

(j)

~~proof of current immunizations as defined in 16.36.9.11 NMAC; and~~

(k) **(i)**

proof of any disqualifying criminal conviction as defined in 16.36.4.9 NMAC.

B. Photographs:

Applicants for original licensure shall attach a recent passport size, color photograph, front-view of face.

C. Prior to licensure

the applicant shall take and pass a board approved jurisprudence examination. The applicant must pass the jurisprudence exam with a minimum score of seventy-five percent or higher.

D. An apprentice must

remain under the direct supervision of a sponsor until all requirements have been met or the apprentice license has been terminated by the board.

E. Renewal of a body

art apprentice license:

(1) License will expire one year after date of issue;

(2) Timely renewal of license(s) is the full and complete responsibility of the Licensee. Failure to renew the license by the expiration date will result in a late fee.

(3) Licensees shall renew a body artist apprentice license on or before the expiration date if needed to complete their current apprenticeship.

(4) Renewal of apprentice license shall include the following information:

(a) name of apprentice sponsor;

(b) name of establishment and address where apprenticeship will be conducted, establishment license must be current upon receipt of application.

(c) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.2.13 NMAC; and

~~(d) proof of current immunizations as defined in 16.36.9.11 NMAC; and~~

~~(e) (d)~~ proof of any disqualifying criminal conviction as defined in 16.36.4.9 NMAC.

[16.36.9.8 NMAC – N, 1/11/2022; A, 7/12/2022]

16.36.9.9 SPONSOR LICENSE APPLICATION FOR PERMANENT COSMETICS:

A. A licensee may be approved to sponsor [only one] up to four permanent cosmetic apprentice at a time. A sponsor must be licensed in the areas they will be training. Incomplete applications will be returned. All applications are valid for one year from date received. A complete application includes:

(1) non-refundable application fee;

(2) a current New Mexico permanent ~~[cosmetic]~~ cosmetics practitioners license;

(3) documentation of legally practicing

as a permanent cosmetics practitioner ~~[in New Mexico]~~ for ~~[at least]~~ a minimum of five years without any disciplinary action;

(4) a curriculum must be submitted on the form provided by the board. An approved basic fundamental curriculum shall include the following requirements as required in ~~[16.36.9.14]~~ 16.36.9.13 NMAC. ~~[to the board staff for approval; curriculum]~~ The curriculum shall include references and resources to be used and methods of evaluation for each area covered; and

(5) name, address and phone number of licensed establishment where apprenticeship will be conducted. Establishment license must be active upon receipt of application;

(6) proof of disqualifying criminal conviction as defined in 16.36.4.9 NMAC.

B. Photographs: Applicants for sponsor licensure shall attach a recent passport size, color photograph, front-view of face.

C. Upon approval of application, a board approved log will be available to record progress during the apprenticeship. This log will serve as proof of completion of training program.

D. Upon completion of the apprenticeship program, the sponsor and apprentice shall submit ~~[the apprentice log to the board administrator. The log shall be sent to the board administrator within 15 days and shall include a sworn statement made under penalty of perjury, from the sponsor and the apprentice stating the apprenticeship has been completed. The sponsor will give a copy of the log and statement to the apprentice.]~~ proof of completed training.

E. The apprentice will then receive notification from the board stating the apprentice is eligible to take the national theory exam.

F. Renewal of body art apprentice sponsor license:

(1) License will expire one year after date of issue.

(2) Timely renewal of license(s) is the full and complete responsibility of the licensee. Failure to renew the license by the expiration date will result in a late fee.

(3) Licensees shall renew a body artist apprentice sponsor license on or before the expiration date ~~[if needed to complete their current apprenticeship].~~

(4) Renewal of apprentice license shall include the following information:

(a) ~~[name of apprentice;]~~ a curriculum as required in 16.36.9.13 NMAC. ~~[to the board staff for approval;]~~ The curriculum shall include references and resources to be used and methods of evaluation for each area covered;

(b) name of establishment and address where apprenticeship will be conducted, establishment license must be active upon receipt of application; and

(c) proof of disqualifying criminal conviction as defined in 16.36.4.9 NMAC.

G. Sponsors adding another area of practice to their license to train apprentices can take practical training hours from a certified training program equivalent to the training required by New Mexico. Proof of practical training from a certified training program and a copy of the curriculum must be submitted with the application no later than August 30, 2022.

[16.36.9.9 NMAC – N, 1/11/2022; A, 7/12/2022]

16.36.9.10 APPLICATION FOR PERMANENT COSMETICS PRACTITIONER LICENSE:

A. Application forms:

(1) Applications shall be made on the official form provided by the board. Incomplete applications will be returned. All applications are valid for one year from date received. All fees are non-refundable.

(2) Applications for licensure must include:

(a) a completed and signed application;

(b) applicant name;

(c) date of birth;

(d) [proof of age indicating applicant is] applicant must be at least 18 years of age [(government-issued identification with a photo)];

(e) establishment mailing address;

(f) current phone number;

(g) name, address and phone number of licensed establishment where services will be performed. Establishment license must be current upon receipt of application;

(h) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.9.13 NMAC;

~~(i)~~ proof of current immunizations as defined in 16.36.9.11 NMAC;

~~(j)~~ (i) proof of disqualifying criminal conviction as defined in 16.36.4.9 NMAC;

~~(k)~~ (i) proof of completion permanent cosmetics training program and examination as defined in [16.36.9.14 NMAC] 16.36.9.12 NMAC and 16.36.9.13 NMAC;

~~(l)~~ (k) a recent passport size, color photograph; and

~~(m)~~ (l) non-refundable application fee as required by the board.

~~[B. — Photographs:— applicant for permanent cosmetic practitioner must submit a minimum of 10 photographs with at least two from the following areas:—~~

~~(1) — eyebrow simulation;~~

~~(2) — lip liner;~~

~~(3) — lip color;~~

and

~~(4) — eyeliner/ eyelash enhancer of eyes.~~

~~—C] B.~~ The applicant shall

take and pass a written examination approved by the board and the board approved jurisprudence examination. The applicant must pass the exams with a minimum score of seventy-five percent or higher.

C. A licensee applying for an additional area of practice must submit the following requirements:

(1) completed and signed application;

(2) duplicate license fee as defined in 16.36.6.8 NMAC;

(3) proof of completing the permanent cosmetics practical training program for the area of practice as defined in 16.36.9.13 NMAC.

D. Renewal of a practitioner license:

(1) License will expire one year after date of issue;

(2) Timely renewal of license(s) is the full and complete responsibility of the licensee. Failure to renew the license by the expiration date will result in a late fee;

(3) Licensees shall renew their license on or before the expiration date;

(4) Renewal of license shall include the following information:

(a) name and address of establishment. Establishment license must be current upon receipt of application;

(b) name of establishment operator or supervisor;

(c) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.9.13 NMAC; and

~~(d)~~ proof of current immunizations as defined in 16.36.9.11 NMAC; and

~~(e)~~ (d) proof of disqualifying criminal conviction as defined in 16.36.4.9 NMAC.

[16.36.9.10 NMAC - N, 1/11/2022; A, 7/12/2022]

16.36.9.11 [PROOF OF CURRENT IMMUNIZATIONS:—

Proof shall be provided upon request of the board or board representative that apprentice, practitioner, and permanent cosmetic practitioner license has either completed or declined, on a form provided by the board, the hepatitis B vaccination series. For those who decline the hepatitis B vaccination series, an information brochure developed by the New Mexico department of health will be provided which explains the risks of hepatitis B and C.]

[RESERVED]

[16.36.9.11 NMAC – N, 1/11/2022; Repealed, 7/12/2022]

16.36.9.12 PROOF OF COMPLETION OF [TRAINING PROGRAM] SAFETY AND SANITATION:

Proof shall be provided with the original application that the applicant has, at a minimum, completed the following training prior to making application for a license as a permanent cosmetic practitioner or body art operator. Such training must include:

A. a board approved blood borne pathogens training course that meets OSHA (occupational safety and health administration) standards and CDC (center for disease control) recommendations. The training course shall include an examination as a condition of the training completion. The training must be completed within 12 months prior to application and annually thereafter. The training may be obtained through any of the following:

(1) nationally accredited organization;

(2) local government sponsored;

(3) hospital sponsored;

(4) college sponsored;

(5) OSHA sponsored;

(6) red cross;

or

(7) board approved.

B. Current certification in first aid and cardiopulmonary resuscitation (CPR). The training shall be obtained through any of the following:

- (1) nationally accredited organization;
- (2) local government sponsored;
- (3) hospital sponsored;
- (4) college sponsored;
- (5) OSHA (occupational safety and health administration) sponsored;
- (6) red cross;
- (7) board approved;

~~[C. — An applicant for a permanent cosmetics apprenticeship shall file an apprentice agreement notarized by all parties that applicant shall complete the board required training requirements:]~~
[16.36.9.12 NMAC - N, 1/11/2022; A, 7/12/2022]

16.36.9.13 PERMANENT COSMETIC APPRENTICESHIP TRAINING AND EXAMINATION REQUIREMENTS:

A. Upon successful completion of an apprenticeship program, an applicant for an original permanent cosmetic practitioner license shall provide proof of having completed a ~~[255-hour board approved curriculum, and shall perform under the direct supervision of a board approved sponsor.]~~ 100 hour theory training program, and practical training under direct supervision with a board approved sponsor as defined in 16.36.1.7 NMAC. Curriculum must be submitted on the form provided by the board. An approved basic fundamental curriculum shall include the following minimum requirements:

B. ~~[A minimum of five of each of the following procedures:— 60 hours]~~ Practical hours must be completed for each area of practice:

- (1) [eye-brow simulation; microblading, hairstrokes, shading;] eyebrow technique, 20 hours;

- (2) [lip-liner;] eyeliner technique, 20 hours;
- (3) [lip-color; and] lip technique, 20 hours;
- (4) [eye-liner/ eyelash enhancement;] beauty mark technique, 10 hours;
- (5) tattoo lightening, 10 hours;
- (6) scalp micropigmentation, 20 hours;
- (7) scar camouflage, 40 hours.

C. ~~[Client records shall be maintained by the practitioner applicant to verify that the minimum requirements for the procedures were completed.]~~ Direct supervision for practical training in permanent cosmetics techniques must include:

- (1) shading;
- (2) lining;
- (3) pointillism.

D. ~~[The practitioner applicant shall submit 10 before and after photographs whereby the practitioner has personally performed one complete procedure for each of the following areas:]~~ Client records shall be maintained by the practitioner applicant to verify that the minimum requirements for the procedures were completed.

- ~~[(1) — eye brow simulation;~~
- ~~———— (2) — lip liner;~~
- ~~———— (3) — lip color;— and~~
- ~~———— (4) — eye liner/ eyelash enhancement.]~~

E. Introduction to permanent cosmetics: ~~[40]~~ 5 hours

- (1) History of tattooing as it applies to permanent ~~[makeup]~~ cosmetics.

- (2) Overview of the different types of machines and devices.
- (3) State laws and regulations for permanent cosmetics practitioners.

F. Professional standards and client care: ~~[20]~~ 10 hours

- (1) Client expectations.
- (2) Medical history.

- (3) Consent and disclosure form.
- (4) Record keeping.
- (5) HIPPA standards.

- (6) Photography.

G. Office set-up: ~~[40]~~ 5 hours

- (1) Understanding establishment requirements and rules.

- (2) General equipment.
- (3) Table, chair, work surface, ~~[lightening]~~ and lighting.

H. ~~[Disinfection and sterilization]~~ Safety and Sanitation: ~~[40]~~ 30 hours

- (1) Definition of terms.

- (2) Discuss acceptable forms of sterilization.
- (3) Proper use of chemical agents, antiseptics, disinfestations, and fumigants.

- (4) OSHA and CDC guidelines regarding blood borne pathogens. Apprentice must have training certificates outlined in 16.36.9.12 NMAC prior to entering a training program.

- (5) Hand washing stations.
- (6) Hepatitis B vaccination.

- (7) PPE, such as gloves and proper attire to avoid cross contamination.

- (8) Proper handling of devices, needles, and pigments.

- (9) Sanitary measures during procedure set-up, and clean-up.

I. Client preparation: 10 hours

- (1) Preparing the clients skin.

- (2) Ways of marking the skin.

- (3) Anesthetics used before, during, and after procedure.

J. Color and pigment theory: 10 hours

(1) Knowledge of skin type and undertones.

(2) Pigment care such as expiration, storage, and mixing.

(3) Use of safety sheets.

K. Skin anatomy: [20] 15 hours

(1) Understanding of skin and layers.

(2) Healing process of the skin and its care.

(3) Diseases, disorders, and conditions such as; infection, herpes simplex, shingles, moles, warts, freckles, psoriasis, eczema, rosacea, and reactions.

(4) Surgically modified skin and scar tissue.

(5) Compromised skin from medical procedure, such as radiation and chemotherapy.

L. Machine/Needle theory: 10 hours

(1) Operation, maintenance, and instrument storage.

(2) Proper needle handling and disposal.

(3) Groups, numbers, and configurations.

(4) Pre-sterilized, single use.

M. Business set-up: 5 hours

(1) Basic business and social media guidelines.

(2) Legal requirements.

(3) Insurance/liability.

(4) New Mexico laws and regulations.

N. An applicant for permanent cosmetic practitioner license shall take an exam approved by the board with a minimum passing score of seventy-five percent or higher. A candidate who does not meet this score can retest up to two times. A candidate who does not pass the written examination must wait at least seven days before retesting. Any candidate who does not meet the minimum passing score after three attempts shall be required to enroll or re-enroll in an apprentice program.

O. [A permanent cosmetic practitioner applicant engaged in a state board approved apprenticeship training program prior to the effective date of July 1, 2018 shall have until August 31, 2018 to comply with apprenticeship requirements.] Out of state training must be taken from a board approved training program that is equivalent to the training required in New Mexico. A curriculum must be submitted to the board for approval prior to any training. An approved training program application must include the following requirements:

(1) application provided by the board;

(2) establishment fee as defined in 16.36.6 NMAC;

(3) training program name and contact information;

(4) sponsor application and fee for each instructor;

(5) sponsors must provide proof of practicing for a minimum of five years outlined in 16.36.9.9 NMAC and 16.36.9.15 NMAC.

(6) a curriculum as required in Section 16.36.9.12 NMAC and 16.36.9.13 NMAC to the board staff for approval;

(7) an apprentice must apply for a New Mexico apprentice license and uphold requirements within the state or other jurisdiction they receive the training;

(8) out of state training programs approved by the board must comply with the renewal requirements for establishments and sponsors.

[16.36.9.13 NMAC – N, 1/11/2022; A, 7/12/2022]

16.36.9.15 CREDIT GRANTED FOR SUBSTANTIALLY EQUIVELENT TRAINING AND EXPERIENCE:

[**A.**—An applicant for licensure as a body artist may be granted credit for training and experience obtained from any source, whether within or outside New

Mexico, if the applicant demonstrates to the satisfaction of the board that the applicant's training and experience is substantially equivalent to the training and experience required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act. The applicant shall apply for licensure as a body artist on an official form approved by the board obtained from the Department for that purpose, and shall meet the following minimum requirements in addition to those set forth in subsections A through C of this section 16.36.2.17 NMAC:

B.—An applicant for licensure as a body artist may be granted credit for training and experience obtained from any source, whether within or outside New Mexico, if the applicant demonstrates to the satisfaction of the board that the applicant's training and experience is substantially equivalent to the training and experience required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act. The applicant shall apply for licensure as a body artist on an official form approved by the board obtained from the Department for that purpose, and shall meet the following minimum requirements in addition to those set forth in subsections A through C of this section 16.36.2.17 NMAC:

(1) a certified copy of a current tattoo or body artist license from the other state or jurisdiction or provided that the board shall grant credit for training and experience obtained from any source;

(2) a current copy of the rules and regulations pertaining to tattooing, body piercing, scarification, and permanent cosmetics from the other state or jurisdiction;

(3) a letter of licensure verification mailed by the licensing authority from the other state or jurisdiction to the board which shall include:

(a) verification that the applicant holds a valid and unexpired license;

(b) the license issuance date;

(c) the license expiration date;

(d) a statement as to whether the applicant has ever been subject to discipline or if there are any complaints or investigations pending against the licensee; and

(e) upon the request of the board, a written consent from the applicant allowing the board or its designee to examine disciplinary, complaint, or investigative records of the other licensing authority;

(f) proof of disqualifying criminal convictions as defined in 16.36.4.9 NMAC;

C. An applicant seeking credit for training and experience obtained as a licensed tattoo or body artist in a state or jurisdiction outside New Mexico whose licensing requirements are less stringent than those in effect in New Mexico shall be required to meet the requirements of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act.

(1) If the applicant's training and experience is from a state or jurisdiction outside New Mexico, the applicant shall demonstrate to the satisfaction of the board that all of the following requirements are met:

(2) the applicant was authorized by law to perform tattooing, body piercing, scarification, or permanent cosmetics without limitation in the state or jurisdiction during the time period the applicant obtained the training and experience;

(3) the applicant has been a tattoo or body artist who has performed tattooing, body piercing, scarification, and permanent cosmetics in that state or jurisdiction immediately prior to applying for licensure as a body artist in New Mexico; and

(4) the applicant shall submit to the board:

(a) three letters of recommendation from a licensed tattoo or body artist in good standing in New Mexico or another state or jurisdiction;

(b) twenty color photographs of completed procedures by the applicant, demonstrating the applicant's ability, knowledge, and fitness to tattooing, body piercing, scarification, and permanent cosmetics procedures effectively and in a safe and healthy environment;

(c) CPR, First Aid and blood borne pathogen certificates issued to the applicant within six months immediately preceding the application for licensure;

(d) affidavits from prior employers or supervisors;

(e) W-2 or 1099 forms; and

(f) federal or state tax returns verifying occupational status.

D. If the applicant's training and experience was not obtained as a licensed tattoo or body artist in a state or jurisdiction outside New Mexico, or through an apprenticeship or training program from a state or jurisdiction outside New Mexico, the applicant shall demonstrate to the satisfaction of the board that all of the following minimum requirements are met:

For the board to approve an apprenticeship or training program from a state or jurisdiction outside New Mexico, the applicant must submit satisfactory evidence to the board or its designee of the following:

(1) the apprenticeship or training program was licensed or accredited for that purpose by a state agency;

(2) the applicant successfully completed the apprenticeship or training program, as shown by an official transcript or certificate of completion;

(3) during the applicant's participation in the apprenticeship or training program, the applicant's sponsor or trainer was

licensed and in good standing as a tattoo or body artist in the state or jurisdiction where the apprenticeship or training was completed;

(4) the applicant completed the apprenticeship or training program under the direct supervision of the sponsor or trainer in a state-approved program for tattoo or body artists;

(5) the apprenticeship or training program covered the areas of theory and practical experience required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act;

(6) if the apprenticeship or training program completed in another state or jurisdiction included hours allotted to studying the laws and regulations of that state or jurisdiction, the board in its sole discretion may count those hours toward the required number of hours allotted to studying New Mexico laws and regulations; and

(7) the apprenticeship or training program included the total number of hours of theory and practical experience and the number of completed procedures required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act.]

A. An applicant for licensure as a body artist may be granted credit for training and experience obtained from any source, whether within or outside New Mexico. The applicant's training and experience meets the training and experience required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act.

B. An applicant licensed in another state or jurisdiction shall submit the following requirements:

(1) completed and signed application;

(2) non-refundable application fee;

(3) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.6.13 NMAC;

(4) verifications of licensure mailed by the licensing authority from the other state or jurisdiction to the board which shall include:

(a) verification that the applicant holds a valid and unexpired license;

(b) the license issuance date;

(c) the license expiration date;

(d) a statement as to whether the applicant has ever been subject to discipline or if there are any complaints or investigations pending against the licensee; and

(e) upon the request of the board, a written consent from the applicant allowing the board or its designee to examine disciplinary, complaint, or investigative records of the other licensing authority;

(5) proof of any disqualifying criminal conviction as defined in 16.36.4.9 NMAC; and

(6) jurisprudence exam with a passing score of seventy-five percent or higher.

C. An applicant seeking credit for training and experience obtained as a body artist in a state or jurisdiction outside New Mexico whose licensing requirements are less stringent than those in effect in New Mexico shall be required to meet the following requirements;

(1) completed and signed application;

(2) non-refundable application fee;

(3) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.9.12 NMAC;

(4) proof of practice equivalent to the hours of training defined in 16.36.9.13 NMAC

(a) W-2 or 1099 forms; or

(b)

federal or state tax returns verifying occupational status.

(5) jurisprudence exam with a passing score of seventy-five percent or higher.

(6) proof of any disqualifying criminal conviction as defined in 16.36.4.9 NMAC.

D. If the applicant training and experience does not meet the training and experience required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act, the board may request additional requirements outlined in 16.36.9.16 NMAC.

[16.36.9.15 NMAC - N, 1/11/2022; A, 7/12/2022]

16.36.9.16 ADDITIONAL TRAINING REQUIREMENTS:

If the board determines that an applicant's training and experience is not substantially equivalent to the training and experience required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act, it may require:

(1) the applicant to complete additional [course work] training before proceeding with the application process; and

(2) [the applicant to meet any other requirements as may be prescribed by the board, including a practical exam or an apprenticeship program.] an examination approved by the board outlined in 16.36.9.13 NMAC.

[16.36.9.16 NMAC - N, 1/11/2022; A, 7/12/2022]

REGULATION AND LICENSING DEPARTMENT BODY ART PRACTITIONERS, BOARD OF

This is an amendment to 16.36.10 NMAC, Sections 8, 9, 10, 11, 12, 13, 16 and 17, effective 7/12/2022.

16.36.10.8 APPRENTICE LICENSE APPLICATION FOR BODY PIERCING-SCARIFICATION:

A. Application forms:
(1)

Application for any license to be issued or renewed by the board shall be made on the official form provided by the board for that purpose. Incomplete applications will be returned. Designated deadlines will apply to resubmitted applications. All applications are valid for one year from date received.

(2)

Applications for apprentice licensure must include:

(a) non-refundable application fee;
(b) a completed and signed application;
(c) applicant name;

(d) [proof of age indicating applicant is] must be at least 18 years of age [(government-issued identification with a photo)];

(e) current electronic mail address

(g) current phone number;

(h) name, address and phone number of licensed establishment where apprenticeship will be conducted. Establishment license must be current upon receipt of application.

(i) an apprentice sponsorship application which must be completed and signed by a body art practitioner who meets the requirements within 16.36.10.9 NMAC and is licensed in the kind of body art the applicant is seeking an apprenticeship license;

(j) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.10.13 NMAC; and

~~**(k)**~~ proof of current immunizations as defined in 16.36.10.11 NMAC; and

~~**(h)**~~ **(k)** proof of any disqualifying criminal convictions as defined in 16.36.4.9 NMAC.

B. Photographs:

Applicants for original licensure shall attach a recent passport size, color photograph, front-view of face.

C. Prior to licensure

the applicant shall take and pass a board approved jurisprudence examination. The applicant must pass the jurisprudence exam with a minimum score of seventy-five percent or higher.

D. An apprentice

must remain under the direct supervision of his or her sponsor until all requirements have been met or the apprentice license has been terminated by the board.

E. Renewal of a body art apprentice license:

(1) License will expire one year after date of issue;

(2) Timely renewal of license(s) is the full and complete responsibility of the Licensee. Failure to renew the license by the expiration date will result in a late fee.

(3) Licensees shall renew a body piercing-scarification license on or before the expiration date if needed to complete their current apprenticeship.

(4) Renewal of apprentice license shall include the following information:

(a) name of apprentice sponsor;

(b) name of establishment and address where apprenticeship will be conducted, establishment license must be current upon receipt of application.

(c) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.10.13 NMAC; and

~~(d) proof of current immunizations as defined in 16.36.10.11 NMAC; and~~

(d) proof of any disqualifying criminal convictions as defined in 16.36.4.9 NMAC. [16.36.10.8 NMAC – N, 2/3/2022; A, 7/12/2022]

16.36.10.9 SPONSOR LICENSE APPLICATION FOR BODY PIERCING-SCARIFICATION:

A. A licensee may be approved to sponsor only one body piercing-scarification apprentice at a time. Incomplete applications will be returned. All applications are valid for one year from date received. A complete application includes:

(1) non-refundable application fee;

(2) a current New Mexico body piercing-scarification license;

(3) documentation of legally practicing body piercing-scarification [~~in New Mexico~~] for at least five years without any disciplinary action;

(4) a curriculum must be submitted on the form provided by the board. An approved basic fundamental curriculum shall include the following requirements as required in ~~[16.36.10.14]~~ 16.36.10.13 NMAC ~~[to the board staff for approval]~~; curriculum shall include references and resources to be used and methods of evaluation for each area covered; ~~[and]~~

(5) name, address and phone number of licensed establishment where apprenticeship will be conducted. Establishment license must be active upon receipt of application; and

(6) proof of any disqualifying criminal convictions as defined in 16.36.4.9 NMAC.

B. Photographs:

Applicants for sponsor licensure shall attach a recent passport size, color photograph, front-view of face.

C. Upon approval of application, a board approved log will be available to record progress during the apprenticeship. This log will serve as proof of completion of training program. ~~[The sponsor shall submit a completed log to the board administrator on the first day of each month showing the previous month progress report.]~~

D. Upon completion of the apprenticeship program, the

sponsor and apprentice shall submit the apprentice log to the board administrator. The log shall be sent to the board administrator within 15 days and shall include a sworn statement made under penalty of perjury, from the sponsor and the apprentice stating the apprenticeship has been completed. The sponsor will give a copy of the log and statement to the apprentice.

E. The apprentice will then receive notification from the board stating the apprentice is eligible to take the national theory exam.

F. Renewal of body piercing and scarification sponsor license:

(1) License will expire one year after date of issue;

(2) Timely renewal of license(s) is the full and complete responsibility of the licensee. Failure to renew the license by the expiration date will result in a late fee.

(3) Licensees shall renew a body piercing and scarification apprentice sponsor license on or before the expiration date if needed to complete their current apprenticeship.

(4) Renewal of apprentice license shall include the following information:

(a) name of apprentice; and

(b) name of establishment and address where apprenticeship will be conducted, establishment license must be active upon receipt of application.

(c) proof of any disqualifying criminal convictions as defined in 16.36.4.9 NMAC.

[16.36.10.9 NMAC – N, 2/3/2022; A, 7/12/2022]

16.36.10.10 APPLICATION FOR BODY PIERCING-SCARIFICATION PRACTITIONER LICENSE:

A. Application forms:

(1) Applications shall be made on the official form provided by the board.

Incomplete applications will be returned. All applications are valid for one year from date received. All fees are non-refundable.

(2)

Applications for licensure must include:

(a) a completed and signed application;
(b) applicant name;
(c) date of birth;
(d) proof of age indicating applicant is at least 18 years of age (government-issued identification with a photo);
(e) establishment mailing address;
(f) current phone number;
(g) name, address and phone number of licensed establishment where services will be performed. Establishment license must be current upon receipt of application;

(h) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.10.13 NMAC;

~~(i)~~ proof of current immunizations as defined in 16.36.10.11 NMAC;

~~(j)~~ (i) proof of any disqualifying criminal convictions as defined in 16.36.4.9 NMAC;

~~(k)~~ (i) proof of completion of body piercing-scarification training program and examination as defined in 16.36.10.14 NMAC.

~~(l)~~ (k) a recent passport size, color photograph; and

~~(m)~~ (l) non-refundable application fee as required by the board.

~~[B.] Photographs: applicant for body piercing-scarification must include a minimum of 10 photographs of healed piercing the applicant has personally performed.]~~

~~[C.] B.~~ The applicant shall take and pass a written examination

approved by the board and the board approved jurisprudence examination. The applicant must pass the exams with a minimum score of seventy-five percent or higher.

~~[D.] C.~~ Renewal of a practitioner license:

(1) License will expire one year after date of issue;
(2) Timely renewal of license(s) is the full and complete responsibility of the licensee. Failure to renew the license by the expiration date will result in a late fee;

(3) Licensees shall renew their license on or before the expiration date;

(4) Renewal of license shall include the following information:

(a) name and address of establishment. Establishment license must be current upon receipt of application;

(b) name of establishment operator or supervisor;

(c) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.10.13 NMAC; and

~~(d)~~ proof of current immunizations as defined in 16.36.10.11 NMAC; and

~~(e)~~ (d) proof of any disqualifying criminal convictions as defined in 16.36.4.9 NMAC.

[16.36.10.10 NMAC – N, 2/3/2022; A, 7/12/2022]

16.36.10.11 [PROOF OF CURRENT IMMUNIZATIONS:]

~~Proof shall be provided upon request of the board or board representative that apprentice, practitioner, and permanent cosmetic practitioner license has either completed or declined, on a form provided by the board, the hepatitis B vaccination series. For those who decline the hepatitis B vaccination series, an information brochure developed by the New Mexico department of health will be provided which explains~~

~~the risks of hepatitis B and C.]~~

[RESERVED]

[16.36.9.11 NMAC – N, 1/11/2022; Repealed, 7/12/2022]

16.36.10.12 PROOF OF COMPLETION OF TRAINING PROGRAM: Proof shall be provided with the original application that the applicant has, at a minimum, completed the following training prior to making application for a license as a body piercing scarification practitioner, or body art operator. Such training must include:

A. a board approved blood borne pathogens training course that meets OSHA (occupational safety and health administration) standards and CDC (center for disease control) recommendations. The training course shall include an examination as a condition of the training completion. The training must be completed within 12 months prior to application and annually thereafter. The training may be obtained through any of the following:

(1) nationally accredited organization;
(2) local government sponsored;
(3) hospital sponsored;
(4) college sponsored;
(5) OSHA sponsored;
(6) red cross;
or
(7) board approved.

B. Current certification in first aid and cardiopulmonary resuscitation (CPR). The training shall be obtained through any of the following:

(1) nationally accredited organization;
(2) local government sponsored;
(3) hospital sponsored;
(4) college sponsored;
(5) OSHA (occupational safety and health administration) sponsored;

or (6) red cross;
 approved; (7) board
 [C. — An applicant for a body piercing-scarification apprenticeship shall file an apprentice agreement signed under penalty of perjury, by all parties that applicant shall complete the board required training requirements.]
 [16.36.10.12 NMAC – N, 2/3/2022; A, 7/12/2022]

**16.36.10.13 BODY
 PIERCING - SCARIFICATION
 APPRENTICESHIP TRAINING
 AND EXAMINATION
 REQUIREMENTS:**

A. Upon successful completion of apprenticeship program, an applicant for original piercing-scarification practitioner license shall provide proof[; acceptable to the board or its designee, that applicant has] of having completed an apprenticeship program. The 100 hours of theory can be taught in a group training but the 1100 hours of practical training shall be done under the direct supervision of a board approved sponsor. [licensed practitioner with instruction and experience in the kind of body art for which the applicant seeks a body art practitioner license.]

B. Proof of completing an apprentice program shall [include:
 (1) verification of completion of apprenticeship program] be submitted on a log provided by the board;
 [(2) — a minimum of 10 original photographs of healed piercings-scarifications which the artisan has personally performed and a minimum of three signed testaments from previous clients.]

C. Body piercing apprenticeship curriculum: 1200 hours:
 [(1) — Orientation = 100 hours:
 (a) state laws and regulations;
 (b) tax and business license requirements;
 (c)

OSHA blood borne pathogens standard;
 (d) the establishment's exposure control plan;
 (e) SDS sheets;
 (f) paperwork and business documentation;
 (g) HHPAA (Health Insurance Portability and Accountability Act of 1996-privacy rule);
 (h) environment/appropriate studio set-up;
 (i) professional image;
 (j) appropriate communication with clients;
 (k) ethics and legalities;
 (i) minors;
 (ii) drugs and alcohol;
 (iii) medical conditions/risk assessment;
 (iv) personal boundaries;
 (l) dealing with emergencies;
 (i) blood spills;
 (ii) fainting;
 (iii) bleeding;
 (iv) needlesticks; and
 (v) other exposures:
 (2) Sterilization, disinfection theory and practical - 100 hours:
 (a) microbiology;
 (b) definitions;
 (c) microorganisms of the skin;
 (d) factors that influence the survival and growth of microorganisms;
 (e) breaking the chain of infection;

(f) infection control;
 (g) handwashing;
 (h) types of soaps and hand sanitizers;
 (i) use of gloves and other personal protective equipment;
 (j) how to recognize, prevent and remedy cross-contamination;
 (k) immunizations;
 (l) cleaning, disinfection and sterilization;
 (m) sterile chart;
 (n) cleaning/appropriate procedures;
 (o) implement pre-cleaning before sterilization/appropriate use of cleaning solutions and ultrasonic cleaners;
 (p) disinfection/appropriate use and disposal of disinfecting solutions; and
 (q) sterilization/appropriate use and maintenance of autoclave sterilizers:
 (3) Body piercing theory - 200 hours:
 (a) jewelry;
 (b) standards and certifications;
 (c) certified materials for new piercings;
 (d) other appropriate materials for new piercings;
 (e) jewelry materials for healed piercings;
 (f) jewelry to avoid;
 (g) quality jewelry (things to look for);
 (h) jewelry styles;
 (i) cleaning, sterilization and storage of jewelry;
 (j) anatomy;
 (k) understanding of skin;

(f)	parts and functions of skin;	shall include, at a minimum, 50-	(c)	HIPPA (Health Insurance Portability
(m)	oral/facial anatomy as it pertains to	practical body piercing procedures-		and Accountability Act of 1996
	piercing;	performed by the apprentice under-		privacy rule);
(n)		sponsor supervision. The 50-	(d)	
	knowledge and ability to avoid-	supervised-completed procedures-		environment;
	damage to underlying blood vessels-	shall consist of at least five completed	(i)	
	and nerves;	procedures in each of the following		reception and display;
(o)		areas:	(ii)	
	knowledge and recognition of			procedure room furniture, fixtures,
	disorders, anomalies and diseases of		(iii)	and lighting;
	the skin;			sterilization/instrument processing
(p)			(iv)	room(s);
	body anatomy as it pertains to			restrooms;
(q)	piercing;		(e)	
	determining the appropriateness of a			professional ethics and legalities;
	piercing;		(i)	
(r)				personal boundaries;
	equipment;		(ii)	
(s)				bedside manners;
	disposable supplies;		(iii)	
(t)				medical conditions/risk assessment;
	needles;	(j)	(iv)	
(u)		Curriculum should include the		business documentation and
	sharps disposal;	following for each procedure:	(v)	recordkeeping;
(v)				insurance/liability;
	reusable equipment;		(vi)	
(w)				waivers;
	storage;		(vii)	
(x)				minors;
	aftercare; and		(viii)	
(y)				drugs and alcohol;
	piercing guns (theory only):		(ix)	
(4)	Body-			dealing with emergencies.
	piercing observation/practical - 800-		(2)	Scientific
	hours:			Concepts – 20 hours;
(a)			(a)	
	proper use of safety procedures-	(1) Business		Anatomy and Physiology;
	outlined in theory training;	requirements – 10 hours:	(i)	
(b)				parts and functions of skin and
	aseptic technique;	(a)		underlying anatomy;
(c)			(ii)	
	room set-up and break-down;			knowledge and ability to avoid
(d)				damage to underlying blood vessels
	skin preparation;		(iii)	and nerves;
(e)				knowledge and recognition of
	client relations/relaxation techniques;		(iv)	disorders, anomalies, and diseases of
(f)				the skin;
	pain management;		(v)	surgically modified skin and scar
(g)				tissue;
	piercing techniques;			skin that is compromised due to
(h)				medical procedures such as radiation
	dealing with mistakes;			and chemotherapy;
(i)				
	in order to be approved, curriculum-	(vi)		
	for body piercing practitioner training			
		recordkeeping;		

<u>wound healing and wound care;</u>	<u>(vi)</u>	<u>allergies.</u>	<u>(iv)</u>	<u>tray setup and break down;</u>	<u>(iv)</u>
<u>Safety, Sanitation, and Infection Control;</u>	<u>(b)</u>	<u>Tools, supplies and equipment used for body piercing;</u>	<u>(b)</u>	<u>marking implements and techniques;</u>	<u>(v)</u>
<u>microbiology and pathology;</u>	<u>(i)</u>	<u>disposable supplies: including handling, storage, and disposal;</u>	<u>(i)</u>	<u>piercing and jewelry insertion techniques;</u>	<u>(vi)</u>
<u>microorganisms of the skin;</u>	<u>(ii)</u>	<u>reusable tools and equipment: including handling and storage;</u>	<u>(ii)</u>	<u>healing and aftercare;</u>	<u>(vii)</u>
<u>factors that influence the survival and growth of microorganisms;</u>	<u>(iii)</u>	<u>types of tools used for piercing procedures and jewelry manipulation;</u>	<u>(iii)</u>	<u>preventing and troubleshooting problems;</u>	<u>(viii)</u>
<u>disease transmission;</u>	<u>(iv)</u>	<u>piercing guns (theory only).</u>	<u>(iv)</u>	<u>(4) Body piercing theory should cover the following procedures:</u>	<u>(a)</u>
<u>hand hygiene;</u>	<u>(v)</u>	<u>Needles;</u>	<u>(c)</u>	<u>Ear piercings;</u>	<u>(i)</u>
<u>use and limitation of gloves and other personal protective equipment;</u>	<u>(vii)</u>	<u>needle handling, storage, and disposal;</u>	<u>(i)</u>	<u>earlobe;</u>	<u>(ii)</u>
<u>how to recognize, prevent and remedy cross-contamination;</u>	<u>(viii)</u>	<u>bevel theory;</u>	<u>(ii)</u>	<u>ear cartilage – helix;</u>	<u>(iii)</u>
<u>infections control;</u>	<u>(ix)</u>	<u>needle modification.</u>	<u>(iii)</u>	<u>ear cartilage – flat/scapha;</u>	<u>(iv)</u>
<u>sanitation and cleaning;</u>	<u>(x)</u>	<u>Jewelry;</u>	<u>(d)</u>	<u>ear cartilage – conch;</u>	<u>(v)</u>
<u>disinfection;</u>	<u>(xi)</u>	<u>standards and certifications;</u>	<u>(i)</u>	<u>ear cartilage – diath;</u>	<u>(vi)</u>
<u>sterilization;</u>	<u>(xii)</u>	<u>certified materials for new piercings as outlined in 16.36.5 NMAC;</u>	<u>(ii)</u>	<u>ear cartilage – rook;</u>	<u>(vii)</u>
<u>personal immunizations;</u>	<u>(xiii)</u>	<u>other appropriate materials for new piercings;</u>	<u>(iii)</u>	<u>ear cartilage – tragus;</u>	<u>(vii)</u>
<u>aseptic technique;</u>	<u>(xiv)</u>	<u>jewelry materials for healed piercings;</u>	<u>(iv)</u>	<u>ear cartilage – forward helix;</u>	<u>(ix)</u>
<u>skin prep and proper use of antiseptics;</u>	<u>(xv)</u>	<u>jewelry styles;</u>	<u>(v)</u>	<u>ear cartilage – orbital an industrial.</u>	<u>(b)</u>
<u>proper use of disinfectants;</u>	<u>(xvi)</u>	<u>characteristics of jewelry that is safe for initial piercings;</u>	<u>(vi)</u>	<u>Facial piercings;</u>	<u>(i)</u>
<u>use and maintenance of ultrasonic cleaners and instrument washers;</u>	<u>(xvii)</u>	<u>characteristics of potentially problematic jewelry;</u>	<u>(vii)</u>	<u>nostril;</u>	<u>(ii)</u>
<u>use and maintenance of different types of autoclaves.</u>	<u>(3) Body piercing theory – 70 hours;</u>	<u>cleaning, sterilization and storage of jewelry.</u>	<u>(viii)</u>	<u>high nostril;</u>	<u>(iii)</u>
<u>Client consultation;</u>	<u>(a)</u>	<u>Body piercing theory should include the following for each procedure outlined in 16.36.10.13.3 (f) NMAC;</u>	<u>(e)</u>	<u>septum;</u>	<u>(iv)</u>
<u>determining the appropriateness of the piercing;</u>	<u>(i)</u>	<u>related anatomy;</u>	<u>(i)</u>	<u>eyebrow;</u>	<u>(v)</u>
<u>communicating risks;</u>	<u>(ii)</u>	<u>appropriate placement;</u>	<u>(ii)</u>	<u>nose bridge.</u>	<u>(c)</u>
<u>medical history as it pertains to piercing;</u>	<u>(iii)</u>	<u>jewelry size and style;</u>	<u>(iii)</u>	<u>Oral piercings;</u>	<u>(i)</u>
				<u>tongue;</u>	<u>(ii)</u>
				<u>lip (including labret, philtrum, etc.);</u>	<u>(iii)</u>
				<u>oral frenulum piercing;</u>	<u>(iv)</u>
				<u>vertical lip;</u>	

(v) cheek.

(d) Torso piercings:

(i) nipple;

(ii) navel;

(e) Genital piercing:

(i) vulva piercings;

(ii) penis piercings;

(f) surface piercings;

(g) single point piercings;

(h) the process of stretching piercings.

(5) Body piercing observation/practical – 1100 hours:

(a) demonstrate proper use of safety procedures outlined in theory training;

(b) aseptic technique;

(c) room set-up and break-down;

(d) skin preparation;

(e) bedside manner;

(f) piercing techniques;

(g) dealing with mistakes;

(h) body piercing practitioner training shall include, at a minimum, 100 hours of procedure observation. This should include no less than 100 piercing procedures. Those 100 procedures should feature a variety of piercing locations and techniques.

(i) body piercing practitioner training shall include, at a minimum, 50 completed body piercing procedures performed by the apprentice under sponsor supervision. The 50 completed procedures shall consist of at least five completed procedures in each of the following areas:

(i) earlobes;

(ii) ear cartilage – helix, scalpha, or conch;

(iii) inner ear cartilage – tragus, rook, or daith;

(iv) nostril;

(v) septum;

(vi) nipple;

(vii) navel;

(viii) tongue; and

(ix) lip/labret.

An applicant for a body art piercing-scarification practitioner license shall take the body piercing-scarification examination approved by the board with a minimum passing score of seventy-five percent or higher. A candidate who does not meet this score can retest up to two times. A candidate who does not pass the written examination must wait at least seven days before retesting. Any candidate who does not meet the minimum passing score after three attempts shall be required to enroll or re-enroll in an apprentice program. [16.36.10.13 NMAC – N, 2/3/2022; A, 7/12/2022]

16.36.10.16 CREDIT GRANTED FOR SUBSTANTIALLY EQUIVELENT TRAINING AND EXPERIENCE:

[A. — An applicant for licensure as a body artist may be granted credit for training and experience obtained from any source, whether within or outside New Mexico, if the applicant demonstrates to the satisfaction of the board that the applicant's training and experience is substantially equivalent to the training and experience required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act. The applicant shall apply for licensure as a body artist on an official form approved by the board obtained from the Department for that purpose, and shall meet the following

minimum requirements in addition to those set forth in subsections A through C of this section 16.36.2.17 NMAC:

B. — An applicant for licensure as a body artist may be granted credit for training and experience obtained from any source, whether within or outside New Mexico, if the applicant demonstrates to the satisfaction of the board that the applicant's training and experience is substantially equivalent to the training and experience required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act. The applicant shall apply for licensure as a body artist on an official form approved by the board obtained from the Department for that purpose, and shall meet the following minimum requirements in addition to those set forth in subsections A through C of this section 16.36.2.17 NMAC:

(1) — a certified copy of a current tattoo or body artist license from the other state or jurisdiction or provided that the board shall grant credit for training and experience obtained from any source;

(2) — a current copy of the rules and regulations pertaining to tattooing, body piercing, scarification, and permanent cosmetics from the other state or jurisdiction;

(3) — a letter of licensure verification mailed by the licensing authority from the other state or jurisdiction to the board which shall include:

(a) — verification that the applicant holds a valid and unexpired license;

(b) — the license issuance date;

(c) — the license expiration date;

(d) — a statement as to whether the applicant has ever been subject to discipline or if there are any complaints or investigations pending against the licensee; and

(e) — upon the request of the board, a

written consent from the applicant allowing the board or its designee to examine disciplinary, complaint, or investigative records of the other licensing authority:

(f)

proof of disqualifying criminal convictions as defined in 16.36.4.9 NMAC;

C. An

applicant seeking credit for training and experience obtained as a licensed tattoo or body artist in a state or jurisdiction outside New Mexico whose licensing requirements are less stringent than those in effect in New Mexico shall be required to meet the requirements of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act.

(1) If the

applicant's training and experience is from a state or jurisdiction outside New Mexico, the applicant shall demonstrate to the satisfaction of the board that all of the following requirements are met:

(2) the

applicant was authorized by law to perform tattooing, body piercing, scarification, or permanent cosmetics without limitation in the state or jurisdiction during the time period the applicant obtained the training and experience;

(3) the

applicant has been a tattoo or body artist who has performed tattooing, body piercing, scarification, and permanent cosmetics in that state or jurisdiction immediately prior to applying for licensure as a body artist in New Mexico; and

(4) the

applicant shall submit to the board:

(a)

three letters of recommendation from a licensed tattoo or body artist in good standing in New Mexico or another state or jurisdiction;

(b)

twenty color photographs of completed procedures by the applicant, demonstrating the applicant's ability, knowledge, and fitness to tattooing, body piercing, scarification, and permanent

cosmetics procedures effectively and in a safe and healthy environment;

(c)

CPR, First Aid and blood borne pathogen certificates issued to the applicant within six months immediately preceding the application for licensure;

(d)

affidavits from prior employers or supervisors;

(e)

W-2 or 1099 forms; and

(f)

federal or state tax returns verifying occupational status.

D. If the applicant's

training and experience was not obtained as a licensed tattoo or body artist in a state or jurisdiction outside New Mexico, or through an apprenticeship or training program from a state or jurisdiction outside New Mexico, the applicant shall demonstrate to the satisfaction of the board that all of the following minimum requirements are met.

For the board to approve an apprenticeship or training program from a state or jurisdiction outside New Mexico, the applicant must submit satisfactory evidence to the board or its designee of the following:

(1) the

apprenticeship or training program was licensed or accredited for that purpose by a state agency;

(2) the

applicant successfully completed the apprenticeship or training program, as shown by an official transcript or certificate of completion;

(3) during

the applicant's participation in the apprenticeship or training program, the applicant's sponsor or trainer was licensed and in good standing as a tattoo or body artist in the state or jurisdiction where the apprenticeship or training was completed;

(4)

the applicant completed the apprenticeship or training program under the direct supervision of the sponsor or trainer in a state-approved program for tattoo or body artists;

(5) the

apprenticeship or training program

covered the areas of theory and practical experience required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act;

(6) if the

apprenticeship or training program completed in another state or jurisdiction included hours allotted to studying the laws and regulations of that state or jurisdiction, the board in its sole discretion may count those hours toward the required number of hours allotted to studying New Mexico laws and regulations; and

(7) the

apprenticeship or training program included the total number of hours of theory and practical experience and the number of completed procedures required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act.]

A. An applicant

for licensure as a body artist may be granted credit for training and experience obtained from any source, whether within or outside New Mexico. The applicant's training and experience meets the training and experience required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act.

B. An applicant

licensed in another state or jurisdiction shall submit the following requirements:

(1) completed

and signed application;

(2) non-

refundable application fee;

(3) copy of

current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.10.12 NMAC;

(4)

verifications of licensure mailed by the licensing authority from the other state or jurisdiction to the board which shall include:

(a)

verification that the applicant holds a valid and unexpired license;

(b)
the license issuance date;

(c)
the license expiration date;

(d) a statement as to whether the applicant has ever been subject to discipline or if there are any complaints or investigations pending against the licensee; and

(e)
upon the request of the board, a written consent from the applicant allowing the board or its designee to examine disciplinary, complaint, or investigative records of the other licensing authority;

(5) proof of any disqualifying criminal conviction as defined in 16.36.4.9 NMAC; and

(6)
jurisprudence exam with a passing score of seventy-five percent or higher.

C. An applicant seeking credit for training and experience obtained as a body artist in a state or jurisdiction outside New Mexico whose licensing requirements are less stringent than those in effect in New Mexico shall be required to meet the following requirements:

(1) completed and signed application;

(2) non-refundable application fee;

(3) copy of current CPR, first aid and blood borne pathogen training certificates, as defined within 16.36.10.12 NMAC;

(4) proof of practice equivalent to the hours of training defined in 16.36.10.13 NMAC

(a)
W-2 or 1099 forms; or

(b)
federal or state tax returns verifying occupational status.

(5)
jurisprudence exam with a passing score of seventy-five percent or higher.

(6) proof of any disqualifying criminal conviction as defined in 16.36.4.9 NMAC.

D. If the applicant training and experience does not meet the training and experience required

under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act, the board may request additional requirements outlined in 16.36.10.17 NMAC.
[16.36.10.16 NMAC - N, 2/3/2022; A, 7/12/2022]

16.36.10.17 ADDITIONAL TRAINING REQUIREMENTS:

If the board determines that an applicant's training and experience is not substantially equivalent to the training and experience required under the applicable provisions of the Body Art Safe Practices Act and the regulations promulgated by the board pursuant to the Act, it may require:

(1) the applicant to complete additional [course work] training before proceeding with the application process; and

(2)
~~[the applicant to meet any other requirements as may be prescribed by the board, including a practical exam or an apprenticeship program.]~~ an examination approved by the board outlined in 16.36.10.13 NMAC.
[16.36.10.17 NMAC - N, 2/3/2022; A, 7/12/2022]

HISTORY OF 16.36.10 NMAC: [RESERVED]

REGULATION AND LICENSING DEPARTMENT CANNABIS CONTROL DIVISION

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS PART 10 CANNABIS SERVERS LICENSING AND TRAINING PROGRAM

16.8.10.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Cannabis Control Division.
[16.8.10.1 NMAC - N, 07/12/2022]

16.8.10.2 SCOPE: This rule applies to applicants for cannabis server permit education provider and a cannabis server permit pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act or division rules, and where applicable, the general public.
[16.8.10.2 NMAC - N, 07/12/2022]

16.8.10.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act.
[16.8.10.3 NMAC - N, 07/12/2022]

16.8.10.4 DURATION: Permanent.
[16.8.10.4 NMAC - N, 07/12/2022]

16.8.10.5 EFFECTIVE DATE: July 12, 2022, unless an earlier date is cited at the end of a section. [16.8.10.5 NMAC - N, 07/12/2022]

16.8.10.6 OBJECTIVE: The objective of Part 10 is to set forth the provisions that apply to cannabis server permit education and server permits.
[16.8.10.6 NMAC - N, 07/12/2022]

16.8.10.7 DEFINITIONS: Unless otherwise defined below, terms used in Title 16, Chapter 8, Part 1, have the same meanings as set forth in 16.8.1 NMAC, the Cannabis Regulation Act, and the Lynn and Erin Compassionate Use Act.
[16.8.10.7 NMAC - N, 07/12/2022]

16.8.10.8 CANNABIS SERVER PERMITS: ISSUANCE, DISTRIBUTION, REPLACEMENT:

A. Cannabis server permit required. A licensee approved to operate a cannabis consumption area and all servers must satisfactorily complete a program every three years to obtain a server permit. No person shall be employed as a server on a licensed cannabis

consumption area unless that person obtains a server permit, except that a person not previously certified must obtain a server permit within 30 days of employment.

B. Server permit issuance. Satisfactory completion of a certified program will be determined by the student earning a score of eighty percent or higher on an approved test administered at the end of a classroom program or administered at the end of or after completion of a module for on-line programs. Each student who satisfactorily completes a certified program may be issued a server permit by the division. If the student has a child support hold placed on him or her by the human services department, the division shall not issue a server permit to that student until the child support hold has been lifted.

C. Providers' duty to inform the division of student's satisfactory completion. Within 10 business days of satisfactory completion of any certified program, the provider who administered the program shall submit to the division a server permit application for each student who satisfactorily completed the program, including their name, personal identifier, address, date of birth, and any other information required by the division on forms prescribed by the division and in accordance with methods prescribed by the division, including electronic submission. Server permits will be numbered sequentially to provide a unique number for each student who satisfactorily completes a program. Any application received by the division more than 10 business days after the date the course was completed will subject the provider to a late fee of five dollars (\$5) per application. Any incomplete application received by the division shall be returned to the provider for completion.

D. Division will distribute permits. The division will prepare and distribute the server permits to the student within 90 days of satisfactory completion of

a certified program. Providers are required to store original server permit applications in a secured manner for six months from the date of satisfactory completion of the certified program. After six months from the date of satisfactory completion, providers may destroy the original server permit applications through shredding or another method that ensures the information cannot be stolen or otherwise re-used.

E. Temporary Server Permits. Providers who administer a classroom program may issue temporary server permits by recording the test grade on the server permit application and issuing a designated copy of the application to the student. Providers who administer on-line programs may issue temporary server permits by allowing the student to print out a computer generated document, containing information as required by the division, upon satisfactory completion of the program by student. Temporary server permits are valid for 90 days from the date the exam is successfully completed. Photocopies of the designated copy of the application or computer print-out are not valid temporary server permits. If the server loses the temporary server permit, it is the responsibility of the provider to supply a replacement temporary server permit. Providers are required to inform all students that it will take up to 120 days from the date the exam is successfully completed for the server to receive a permanent permit from the division and that if the server needs a replacement temporary server permit the server may obtain one from the provider.

F. Replacement server permits. Requests for replacement server permits must be submitted in writing to the division. Requests must be made by the server, must be submitted on forms prescribed by the division and must be accompanied by a ten dollar (\$10.00) replacement fee in the form approved by the division. If the request is made in person, the server must present a valid, government issued identification card. If the request is

made by mail, the server must enclose a photocopy of a valid, government issued identification card. A request to change the name of the server may, in lieu of a valid, government issued identification card, include a copy of a marriage certificate, divorce decree, or court order.

[16.8.10.8 NMAC - N, 07/12/2022]

16.8.10.9 PROVIDER, INSTRUCTOR AND PROGRAM CERTIFICATION; RENEWAL:

A. Certification required: Any person seeking certification as a provider, instructor or program must submit an application to the division for approval in accordance with this section. An on-line program and a classroom program cannot be combined into one application.

B. Applications for providers and programs:

(1) Providers and instructors:

(a) the name and qualifications of the provider or the name and qualifications of the instructor(s), including a resume, references and the name of the certified program that applicant intends to administer;

(b) for on-line providers, the name and address of all entities owning, profiting, or both from the administration of the on-line course;

(c) fees that will be charged to take the program; and

(d) any other relevant information as may be required by the director.

(2) Programs:

(a) a description of program content that meets the minimum requirements contained in the Cannabis Regulation Act, specifically Section 26-2C-11, NMSA 1978, including a copy of the classroom program's handbook or a copy of the on-line program's quick reference materials to be distributed to and retained by students after satisfactory completion of the program. All programs should include real life examples and should be

administered, at least in part, in an interactive way;

(b) all proposed programs must include a minimum of four and one-half classroom hours or the equivalent for on-line programs;

(c) for on-line programs:

(i) a description of the procedure for electronic transmission of the student's full name, address, personal identifier, driver's license or other government-issued identification number and state of issuance, date of birth, phone number, e-mail address, sex, height, weight, hair color, eye color, test score and test completion date within 10 days of a student's successful completion of the program, including a description of the security measures that will be taken to ensure that the information is stored and transmitted in a secure manner. The electronic transmission of the student's information should meet the data security standards prescribed by the payment card industry security council or the equivalent as determined by the division, and in a format approved by the division;

(ii) a description of any and all security measures taken to ensure that the person who is taking the course is the same person who will receive credit for taking the course and who will submit to the proctored exam at the end of the course;

(iii) proof to the satisfaction of the division that the average user will take at least four clock hours or the equivalent to complete course;

(iv) proof to the satisfaction of the division that students cannot fast-forward or skip through the course materials.

(d) any other reasonably relevant information as may be required by the division;

C. Completeness check: When the division receives an application for certification as a provider, instructor or program, the

division will check the application for completeness.

(1) if the application is incomplete, the division will contact the applicant for additional information;

(2) if the application is complete, the division shall review the application.

D. Standards for licensure: An application for licensure may be granted if the standards identified in this section are met.

(1) Providers and instructors: In reviewing applications for licensure as a provider or instructor the division shall consider:

(a) whether all the information required by these rules has been submitted and is accurate and valid;

(b) the qualifications and references of the applicant, including whether the applicant has 3 or more years of experience related to the sale or service of cannabis and cannabis products;

(c) whether applicant is 21 years of age or older;

(d) whether applicant has ever been found guilty of or admitted guilt to a violation of the Cannabis Regulation Act;

(e) whether applicant intends to teach a program approved by the division in accordance with these rules;

(f) any other reliable and relevant information, as determined by the division.

(2) Programs: In reviewing applications for licensure as a program the division shall consider:

(a) whether the information required by these rules has been submitted and is accurate and valid;

(b) whether the program includes all

content required by law, currently contained in Section 26-2C-11 NMSA 1978;

(c) whether the program includes comprehensive training on how to detect obvious signs of intoxication, focusing both on the sale of cannabis and cannabis products for off-premise and on-premise consumption;

(d) whether the program includes an up-to-date sample photo of a driver's license issued to a minor by the New Mexico motor vehicle division of the New Mexico department of taxation and revenue and training on how to detect a fake or fabricated identification card;

(e) whether the program includes management-specific training, including strategies for management to support servers working under their supervision;

(f) whether the program is reviewed and revised annually to ensure current comprehensive training;

(g) whether the program is interactive and includes real life instructional examples;

(h) for on-line programs whether it is easy to navigate and user-friendly; and

(i) any other reliable and relevant information, as determined by the division.

(3) In addition to the other standards listed above, all providers and instructors shall hold current server permits at all times when providing instruction.

E. Expiration of licensure: Provider, instructor and program licensure expire on December 31 each year.

F. Renewal: Renewal applications for provider, instructor and program licensure must be submitted no later than November 30 of each year.

(1) Renewal applications for providers and instructors must include names and qualifications of the provider or instructors and proof that the provider is covered by a surety bond in the amount of five thousand dollars (\$5,000) of a surety company authorized to transact business in New Mexico;

(2) Renewal applications for programs shall include a summary of all proposed changes to program content from the prior year and any updates that have been made or will be made to the program, including where those changes can be found in the program materials. At a minimum, programs must be updated annually to reflect changes to the law, updated statistical information and an up-to-date sample photo of a driver's license issued to a minor by the New Mexico motor vehicle division of the New Mexico department of taxation and revenue if applicable.

G. Transferability:

Provider, instructor and program licensure are non-transferrable.

H. Cancellation:

A provider or instructor certification shall automatically be cancelled if the provider or instructor ceases to offer classes for 60 days or more, or upon written notice from the provider.

[16.8.10.9 NMAC - N, 07/12/2022]

16.8.10.10

ADMINISTRATION OF SERVER PERMIT TRAINING PROGRAM:

A. Providers'

responsibility in administering program: It is the responsibility of providers to ensure that they and any instructors employed by them are teaching an approved program.

B. Course materials:

Providers shall ensure that each student is provided complete course materials at the beginning of each program. Providers who administer an on-line program shall ensure that each student either has electronic access to course materials or is able to print out course materials for quick reference after satisfactory completion of the program. All course materials shall be

presented by instructors in a manner that does not indicate which material is selected for the proctored test.

C. Prior approval

required: Providers must obtain prior approval from the division before changing the required content of an approved program.

D. Proctored tests:

Proctored tests must be administered in person immediately after completion of a classroom program. Students may not have access to course materials during administration of the proctored test. Exam questions must be rotated on a regular basis to ensure exam validity and security. Providers may allow an applicant who fails the test to re-take it at another time in the presence of an instructor. Proctored tests must be graded by a certified instructor and cannot be graded by a student.

E. On-line tests:

On-line tests must be available to be administered immediately after students complete the course or complete a particular module of the course. Exam questions must be rotated on a regular basis to ensure exam validity and security. Students may not have access to course materials during administration of the on-line test. Providers administering on-line tests shall provide the necessary security measures to the satisfaction of the division to combat the potential for cheating. Examples of security measures include, but are not limited to, shuffling exam questions each time a new exam begins, prohibit students from stopping and resuming the exam session, implement a reasonable time limit on the exam, present security questions at random throughout the exam. The results of the on-line test must be given to the student after completion of the on-line test, and providers shall provide a score report indicating wrong answers by referencing course content section.

F. ADA compliance:

Providers and instructors are required to comply with the Americans with Disabilities Act (ADA) and ensure that students with disabilities are provided with reasonable

accommodation for instructional and learning purposes to the extent required by law.

G. Administration

of on-line programs: Providers who administer an on-line program without the presence of a live instructor must ensure the following:

(1) a secure login process is in place to confirm the identity of the person taking the course;

(2) students may not be allowed to fast-forward through the instruction portion of the course;

(3) students must have adequate access to a help desk or customer service to resolve technical problems without delaying the flow of instruction, as well as access to a person who can answer substantive questions that may arise in the course of the training within 72 hours of the student asking the question;

(4) no advertisements appear during course instruction; and

(5) students either have electronic access to course materials or are able to print out course materials for quick reference after satisfactory completion of the on-line program as required by these rules.

[16.8.10.10 NMAC - N, 07/12/2022]

16.8.10.12 VIOLATION OF PROVIDER AND PROGRAM REQUIREMENTS:

The division may take disciplinary action against any program, or refuse to renew licensure, when the division determines that:

A. a provider, instructor or an agent, knowingly provided false information to the division with regard to completion of a program by any person;

B. a provider, instructor or an agent, failed to conduct the program as approved by the division;

C. any person filing an application with the division for licensure of a provider, instructor or program knowingly submitted false

information to the division;

D. a provider failed to provide to the division complete, timely reports of applicants who satisfactorily completed the program; or

E. a provider or instructor otherwise failed to comply with the alcohol server education article or these rules.

[16.8.10.12 NMAC - N, 07/12/2022]

16.8.10.13 SEVERABILITY:

If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.

[16.8.10.13 NMAC - N, 07/12/2022]

History of 16.8.10 NMAC:
[RESERVED]

**REGULATION
AND LICENSING
DEPARTMENT
CANNABIS CONTROL
DIVISION**

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL
LICENSING
CHAPTER 8 COMMERCIAL
AND MEDICAL CANNABIS
PART 12 DENIAL,
SUSPENSION, OR REVOCATION
OF LICENSE; SANCTION, PLAN
OF CORRECTION, AND CIVIL
MONETARY PENALTY**

16.8.12.1 ISSUING

AGENCY: New Mexico Regulation and Licensing Department, Cannabis Control Division.

[16.8.12.1 NMAC - N, 07/12/2022]

16.8.12.2 SCOPE: This rule applies to all licensees and applicants for licensure pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules.

[16.8.12.2 NMAC - N, 07/12/2022]

16.8.12.3 STATUTORY

AUTHORITY: The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act.

[16.8.12.3 NMAC - N, 07/12/2022]

16.8.12.4 DURATION:

Permanent.

[16.8.12.4 NMAC - N, 07/12/2022]

16.8.12.5 EFFECTIVE

DATE: July 12, 2022, unless an earlier date is cited at the end of a section. [16.8.12.5 NMAC - N, 07/12/2022]

16.8.12.6 OBJECTIVE: The

objective of Part 12 is to promote, preserve, and protect the public health and safety by regulating the safe production, testing, wholesale, and consumption of commercial and medical cannabis, as well as the authority to take action against a licensee or applicant for licensure, and to set forth the procedures for filing a complaint against cannabis establishment licensees.

[16.8.12.6 NMAC - N, 07/12/2022]

16.8.12.7 DEFINITIONS:

Unless otherwise defined below, terms used in Title 16, Chapter 8, have the same meanings as set forth in the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act. [16.8.12.7 NMAC - N, 07/12/2022]

16.8.12.8 GENERAL PROVISIONS:

A. A complaint may be initiated in writing by any person.

B. Complaints must be legible, either printed in black ink or typed.

C. Complaints must contain factual allegations, constituting the alleged violations of any provisions of the Cannabis Regulation Act or division rules.

[16.8.12.8 NMAC - N, 07/12/2022]

16.8.12.9 COMPLAINT

PROCEDURES: A complaint may be initiated by any person in writing and delivered via the division website, mail, or by visiting the division office. Only complaints written on the official complaint form will be formally addressed by the division. The forms required for an official complaint can be obtained from the division office, located at 2550 Cerrillos Road, Santa Fe, NM, 87505, or the division website. [16.8.12.9 NMAC - N, 07/12/2022]

16.8.12.10 PROCEDURES FOR RECEIPT OF A COMPLAINT:

A. The division will maintain a written log of all complaints received, which records at a minimum, the date the complaint was received, and name, addresses of the complainant(s) and respondent(s).

B. Upon receipt of a complaint, the division will:

(1) log in the date the complaint was received;

(2) determine whether the respondent is licensed or an applicant for licensure with the division;

(3) assign a complaint number and create an individual file;

(4) send the complainant a written acknowledgment of receipt of the complaint; and

(5) at the division's discretion, investigate the allegations contained in the complaint to determine their veracity and whether the circumstances warrant any action by the division or referral to law enforcement.

[16.8.12.10 NMAC - N, 07/12/2022]

16.8.12.11 DIVISION ACTION:

A. The division may:

(1) assess a civil monetary penalty that shall not exceed ten thousand dollars (\$10,000) per violation; or

(2) suspend or revoke the license.

B. If the division determines that it lacks jurisdiction or that there is not sufficient evidence or cause to issue a notice of contemplated action, the case shall be closed.

C. The division shall send a letter of the division's decision to both the complainant and respondent stating the division's actions and the reasons for its decision.

D. If the division determines that there is sufficient evidence or cause to proceed with disciplinary action against the licensee, the division shall issue a notice of contemplated action and initiate disciplinary proceedings. [16.8.12.11 NMAC - N, 07/12/2022]

16.8.12.12 PROCEEDINGS AGAINST APPLICANT OR LICENSEE:

A. All disciplinary proceedings will be conducted in accordance with the Uniform Licensing Act, Section 61-1-1 et seq., NMSA 1978.

B. Licensees who have been found culpable and sanctioned by the division shall be responsible for the payments of all costs of the disciplinary proceedings. [16.8.12.12 NMAC - N, 07/12/2022]

16.8.12.13 SCHEDULE OF CIVIL MONETARY PENALTIES:

A. Subject to subsection B of this section, the division shall impose penalties as follows:

(1) For the first offense within a 12-month period, a civil monetary penalty ranging from one thousand dollars (\$1,000) to two thousand dollars (\$2,000) or possible suspension or revocation of the license if the licensee's discipline history shows a pattern warranting suspension or revocation.

(2) For the second offense within a 12-month period, a civil monetary penalty ranging from two thousand dollars (\$2,000) to three thousand dollars (\$3,000) or possible suspension or revocation of the license if the

licensee's discipline history shows a pattern warranting suspension or revocation.

(3) For three or more offenses within a 12-month period, a civil monetary penalty of ten thousand dollars (\$10,000) and revocation of the license.

(4) For any offense involving sale or distribution of cannabis to minors, a fine of ten thousand dollars (\$10,000) and revocation of the license.

B. Any portion of the civil monetary penalties described in this rule may be enhanced or suspended, depending on the particular facts and circumstances of the individual case. When determining whether penalties should be enhanced or suspended, the division shall consider:

(1) the nature of the violation;

(2) the licensee's level of cooperation with the division in investigating the violation;

(3) the violation's threat or potential threat to public health, safety, and welfare;

(4) the licensee's willingness to address and remediate the violation; and

(5) any other fact or circumstance that the division finds relevant.

[16.8.12.13 NMAC - N, 07/12/2022]

16.8.12.14 SETTLEMENT AGREEMENT:

A. Whenever probable cause exists that a licensee has violated a provision of the Cannabis Regulation Act, division rules, or any applicable state or federal law, and a monetary penalty or other disciplinary action may be issued to the licensee for such violation, an informal conference may be held with the licensee to determine whether a compromise of the penalty for the violation would be in the best interests of the state or public health and safety.

B. Final disciplinary action decisions will be mailed to the licensee.

C. A copy of the final decision shall be filed in the division and posted on the division website.

D. The civil monetary penalty imposed shall not exceed those which could be imposed after hearing. [16.8.12.14 NMAC - N, 07/12/2022]

16.8.12.15 SEVERABILITY:

If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.

[16.8.12.15 NMAC - N, 07/12/2022]

History of 16.8.12 NMAC: [RESERVED]

REGULATION AND LICENSING DEPARTMENT CANNABIS CONTROL DIVISION

This is an amendment to 16.8.1 NMAC amending Section 10 and adding Section 11, effective 07/12/2022.

16.8.1.10 LABOR PEACE AGREEMENT: Cannabis establishment licensees, excluding cannabis producer microbusiness and integrated cannabis microbusiness, are encouraged to maintain a labor peace agreement with a bona-fide labor organization that is actively engaged in representing or attempting to represent the applicant's employees. For purposes of this section, a labor peace agreement between a cannabis establishment and a bona fide labor organization includes protecting the state's interests by, at a minimum, prohibiting the labor organization from engaging in picketing, work stoppages, or boycotts against the cannabis establishment. An applicant, whether for an initial license or renewal of a license, must submit an attestation confirming whether or not the applicant has entered

into a labor peace agreement with a bona fide labor organization that is actively engaged in representing or attempting to represent the applicant's employees.

[16.8.12.10 NMAC – Rp, 16.8.1.10 NMAC, 07/12/2022]

[16.8.1.10] 16.8.1.11

SEVERABILITY: If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.

[16.8.12.11 NMAC - N, 08/24/2021; Rn, 16.8.1.10, 07/12/2022]

**REGULATION
AND LICENSING
DEPARTMENT
CANNABIS CONTROL
DIVISION**

This is an amendment to 16.8.2 NMAC replacing Section 56 and adding Sections 57, 58, 59, 60, 61, 62 and 63 effective 07/12/2022.

**16.8.2.56 CANNABIS
RESEARCH LABORATORY
LICENSURE: GENERAL
PROVISIONS:**

A. License Types: The division may license three classes of research:

(1) Tier I: A cannabis research laboratory Tier I may produce cannabis to be ingested by human or animal subjects, or produce cannabis not meant for ingestion, for division approved clinical, agricultural, or market research studies; produce federally legal cannabis products; and may conduct division approved clinical, agricultural, or market research studies;

(2) Tier II: A cannabis research laboratory Tier II may produce cannabis not meant for ingestion, or purchase cannabis to be ingested by human or animal subjects, for division approved clinical,

agricultural, or market research studies; and may conduct division approved clinical, agricultural, or market research studies

(3) Tier III: A cannabis research laboratory Tier III may not produce cannabis and may only purchase cannabis or cannabis products from licensed cannabis research laboratories Tier I and Tier II, as appropriate for approved clinical, agricultural, or market research studies; and may conduct clinical, agricultural, or market research studies.

B. A Tier II or Tier III cannabis research laboratory may purchase cannabis from another licensed cannabis establishment with approval from the cannabis control division only if such research relates to brand specific inquiries (e.g., including studies comparing similar products from different brands or conducting cultivar specific efficacy studies for certain conditions) where use of cannabis or cannabis products produced by a cannabis research laboratory is impossible.

C. Except as noted in subsection (B), a cannabis research laboratory license permits a licensee to produce, process, transport, transfer, sell and possess cannabis consistent with its license type for research and related purposes.

D. A cannabis research laboratory may also produce and distribute federally legal cannabis products as authorized by state and federal law pertaining to drug products.

E. A cannabis research laboratory will provide notice to the cannabis control division prior to commencing the production and distribution of any federally legal cannabis product, including evidence of federal authorizations.

F. All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division.

[16.8.2.56 NMAC – Rp 16.8.2.56 NMAC, 07/12/2022]

**16.8.2.57 APPLICATION
REQUIREMENTS FOR
CANNABIS RESEARCH
LABORATORY LICENSE:**

A. An initial application or renewal for cannabis research laboratory licensure shall include the following:

(1) Business and controlling person(s) contact information, to include:

(a) legal business name, including DBA if applicable

(b) type of business entity;

(c) business mailing address;

(d) business telephone number;

(e) business email address;

(f) business physical address, if different;

(g) business web address, if applicable;

(h) business hours of operation;

(i) name and contact information for each controlling person;

(j) demographic data pursuant to the Cannabis Regulation Act; and

(k) license type sought (Tier I, Tier II, or Tier III);

(2) proof each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of controlling person;

(3) if applicable, certification the applicant is in good standing with the New Mexico secretary of state;

(4) a list of other current or prior licensed cannabis businesses;

(5) a list of other names used by controlling person(s);

(6) name and contact information for the primary controlling person for the business or an authorized representative of the business if not a controlling person;

(7) criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(8) a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

(9) if applicable, a detailed research plan, including but not limited to the applicant's plan for recruiting research subjects, producing or acquiring cannabis, dispensing cannabis, plans for continuing research, and the forms of usable cannabis and cannabis-derived products to be examined; if applicable, a detailed description of any private or public partnerships with higher education institutions, other cannabis research laboratories, or private business;

(10) if applicable, drug enforcement administration license to conduct research;

(11) if applicable, proof of prior approval by the New Mexico regulation and licensing department for the use of any compressed gas extraction equipment to be utilized by the manufacturer;

(12) if applicable, the applicant's DEA license or any conditional approval from the DEA to bulk manufacture cannabis for research, or the applicant's plan for seeking such licensure in the future;

(13) certification the applicant will not use dimethylsulfoxide (DMSO) in the production of cannabis derived products, and will not possess DMSO on the premises of the licensee;

(14) evidence that the applicant has obtained all

necessary permits required for the production of edible and topical cannabis products from the New Mexico environment department and that such permits are valid at the time the license application is submitted

(15) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(16) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(17) certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, fire safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

(18) certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;

(19) certification the applicant will adhere to production and manufacturing requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including creating and maintaining a cultivation plan, and cannabis waste procedures for cannabis products;

(20) certification the applicant will adhere to New Mexico department of agriculture (NMDA) pesticide registration, licensing, and use requirements to ensure a safe product and environment;

(21) applicant's social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant/merced, federally designated opportunity zone, or other rural historic communities;

(22) an attestation by a person authorized to act on behalf of the business of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and

(23) payment of any required fees as set forth in 16.8.11 NMAC.

B. Verification of information: The division may verify information contained in each application and accompanying documentation by:

(1) contacting the applicant or controlling person by telephone, mail, or electronic mail;

(2) conducting an on-site visit;

(3) requiring a face-to-face or virtual meeting and the production of additional documentation; or

(4) consulting with state or local governments.

C. Trade secrets: Any applicant submitting operating procedures and protocols to the

division pursuant to the Lynn and Erin Compassionate Use Act, the Cannabis Regulation Act, or division rules, may claim such information as a trade secret or confidential by clearly identifying such information as "confidential" on the document at the time of submission. Any claim of confidentiality by an applicant must be based on the applicant's good faith belief that the information marked as confidential constitutes a trade secret as defined in the Uniform Trade Secrets Act, Sections 57-3A-1 to -7, NMSA 1978. In the event the division receives a request to inspect such documents, the division will notify the applicant or licensee, via the current email of record. If the division does not receive an injunction pursuant to the Uniform Trade Secrets Act within 10 days of the request to inspect, the division will make the documents marked confidential available for inspection as required pursuant to the Inspection of Public Records Act.

[16.8.2.57 NMAC – N, 07/12/2022]

16.8.2.58 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS RESEARCH LABORATORY LICENSE:

A. Application: A licensed research laboratory shall submit to the division an application form for an amended license, if applicable and obtain approval from the division, prior to implementing any of the following:

- (1) material or substantial change of the size or location of the premises;
- (2) change of licensee's legal or business name;
- (3) change or modification in extraction type(s) or equipment;
- (4) material or substantial change in water source;
- (5) addition or elimination of a controlling person;
- (6) material or substantial change to a licensee's security system; or
- (7) material or substantial modification of the premise.

B. Amended license not required: Changes to standard operating policies and procedures may be made without providing notification to the division, provided that licensees shall maintain at each licensed premises a copy of all current and prior operating policies and procedures.

C. Requirements and processing of application for amended license: The application for amended license must comply with all requirements applicable to initial applications, except that the application shall be clearly designated as one for an amended license. The division shall approve or deny an application for amended license within 90 days of receiving a completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

D. Material or substantial change: Material or substantial changes requiring approval include:

- (1) increase or decrease in the size of the premises, including the sale of property used for the cannabis establishment, the purchase of additional property for the use of the cannabis establishment, or a change in the location of the cannabis establishment;
 - (2) a modification in the licensee's access to the water source submitted with an application for initial or renewal licensure or a ten percent, or more, increase in the licensee's water usage;
 - (3) change to a licensee's security system, including relocation or security points or installation of a new security system; or
 - (4) modification of the premises to relocate cannabis activities.
- [16.8.2.58 NMAC – N, 07/12/2022]

16.8.2.59 EXPEDITED APPROVAL PROCESS: The division shall create an early approval

process for entities that are either registered or conditionally approved by the FDA to manufacture bulk cannabis for research or to research cannabis.

A. Any entity conditionally approved for or holding a valid DEA registration as enumerated below may, within 60 days of the effective date, apply to the cannabis control division for expedited approval as follows:

- (1) An entity that is registered with or conditionally approved by the DEA to manufacture bulk cannabis for research may seek early approval for a Tier I License; or
- (2) An entity that is registered with or conditionally approved by the DEA to research cannabis may seek early approval for a Tier III license.

B. If an applicant meets all the relevant requirements of this section, the division shall issue the research laboratory license within 30 days of receiving a completed application.

[16.8.2.59 NMAC – N, 07/12/2022]

16.8.2.60 PREMISES DIAGRAM:

All licensees shall have a detailed diagram of the premises on hand at all times and made available for in person inspection by the division or its agents upon request. This premises diagram shall conform to the requirements set forth in 16.8.2 NMAC.

[16.8.2.60 NMAC – N, 07/12/2022]

16.8.2.61 CANNABIS RESEARCH LABORATORY POLICIES AND PROCEDURES:

A. Minimum policy and procedure requirements: Licensees shall develop, implement, and maintain on the licensed premises, standard policies and procedures, which shall include the following:

- (1) cannabis research criteria and procedures, which shall be consistent with the requirements of applicable state laws, including the Cannabis Regulation Act, the Lynn and Erin Compassionate

Use Act, division rules, and shall include at a minimum, the following topics:

- (2) protocols for research;
- (3) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis product; and procedures for testing and destruction of cannabis or cannabis products;
- (4) employee policies and procedures to address the following minimum requirements:
- (5) adherence to state and federal laws;
- (6) responding to an emergency, including robbery or a serious accident or incident;
- (7) alcohol and drug-free workplace policies and procedures;
- (8) safety and security procedures;
- (9) occupational health and safety;
- (10) crime prevention techniques; and
- (11) if applicable, confidentiality laws, including the Health Insurance Portability and Accountability Act of 1996; and
- (12) statements signed by employees indicating receipt and understanding of policies and procedures.

B. Training program: Licensee shall implement a training program, approved by the division, to ensure that all personnel present at the premises are provided information and training that, at minimum, covers the following topics within 30 days of the start of employment:

- (1) employee health and safety;
- (2) health and safety hazards;
- (3) hazard communication for all solvents or chemicals used at the licensed premises and as described in the safety data sheet for each solvent or chemical;

- (4) requirements for the proper use of health and safety measures and controls;
- (5) emergency procedures;
- (6) security procedures; and
- (7) record keeping requirements.

C. A licensee, or employee, involved in the handling, transportation, manufacture, extraction, testing, or packaging of cannabis products must successfully complete a food handler course accredited by the American national standards institute (ANSI) prior to conducting any related activities. Such training shall be maintained while employed under a cannabis research licensee. The licensee shall obtain documentation evidencing the fulfillment of this requirement.

D. Training documentation:

- (1) Licensee shall ensure that all personnel receive annual refresher training to cover, at minimum, the topics listed in this section.
- (2) The licensee shall maintain a record, which contains at minimum:
- (a) duties of each personnel;
- (b) a list of all personnel at the premises, including at minimum, name and job title;
- (3) documentation of training topics and dates of training completion;
- (4) the signature of each employee verifying receipt and understanding of each training or refresher training completed.

E. Retention of training documentation: Licensees shall maintain documentation of an employee's training for a period of two years for current employees and at least six months after the termination of an employee's employment.

[16.8.2.61 NMAC – N, 07/12/2022]

16.8.2.62 HUMAN SUBJECT PROTECTIONS:

A. Before conducting research involving human subjects, the licensee shall:

- (1) provide the division with documentation that the study has received institutional review board (IRB) approval, as defined and described in 45 CFR Part 46, federal policy for the protection of human subjects; and
- (2) obtain “informed consent,” as defined and described in 45 CFR Part 46, federal policy for the protection of human subjects, from the human research subject.

B. Nothing in this part relieves the licensee from complying with applicable FDA and state requirements governing cannabis research.

[16.8.2.62 NMAC – N, 07/12/2022]

[16.8.2.56] **16.8.2.63**

SEVERABILITY: If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.

[16.8.2.63 NMAC – Rn, 16.8.2.43 NMAC, 01/11/2022; Rn, 16.8.2.56 NMAC, 07/12/2022]

History of 16.8.2 NMAC:
[RESERVED]

REGULATION AND LICENSING DEPARTMENT CANNABIS CONTROL DIVISION

This is an amendment to 16.8.7 NMAC amending Sections 8, 9, and 10 and adding Sections 11, 12, 13, 14, 15, 16, 17, and 18 effective 07/12/2022.

**16.8.7.8 [REQUIRED-
TESTING OF CANNABIS-
PRODUCTS:** A cannabis-

establishment shall segregate a batch of cannabis product and arrange for samples to be collected and tested by a cannabis testing laboratory if required by this section. The batch must pass all required tests prior to the sale or delivery to a qualified patient, primary caregiver or consumer.

A. Required testing: Unless an exception applies:

(1) A cannabis producer, cannabis producer microbusiness, vertically integrated cannabis establishment, or integrated cannabis microbusiness shall arrange for and pay for the testing specified in Table 1, *Required Testing of Cannabis Products*, below, of any cannabis flower and trim that it harvests prior to:

(a) packaging for retail sale;

(b) transfer to another cannabis establishment for the purposes of retail sale;

(c) retail sale; or

(d) delivery to a patient or consumer.

(2) A cannabis manufacturer, vertically integrated cannabis establishment, or integrated cannabis microbusiness shall arrange for and pay for the testing specified in Table 1 of any cannabis product, including but not limited to a concentrate or extract, that it manufactures prior to:

(a) packaging for retail sale

(b) transfer to another cannabis establishment for the purposes of retail sale;

(c) retail sale; or

(d) delivery to a qualified patient, primary caregiver or consumer.

(3) A cannabis retailer, vertically integrated cannabis establishment, or integrated cannabis microbusiness shall not sell or deliver to a patient or consumer any cannabis product unless the cannabis product has undergone all testing required by this section.

(4) Testing for homogeneity will be required beginning April 1, 2024.

Table 1, Required Testing of Cannabis Products

Product category	Potency	Homogeneity of Batch	Visual Inspection	Microbiological	Residual Pesticides	Residual Solvents
Flower	X	X	X	X	X	
Trim	X	X	X	X	X	
Concentrate (volatile solvent)	X			X	X	X
Kief	X		X	X	X	
Pre-rolls	X			X	X	
Concentrate (non-volatile solvent)	X		X	X	X	
Extract—alcohol	X			X	X	
Extract—other liquid	X			X	X	
Topical	X			X		
Edible	X			X	*	
Other inhalable	X				*	X
Other	X			X	*	X

*Pesticide testing required unless exempted by Subsection E, below:

B. Staggered implementation:

(1) The division may within its discretion delay implementation of sample collection and testing requirements of this section, in whole or in part.

(2) In determining the start date of an individual testing requirement, the division shall consider whether a cannabis testing laboratory has validated a method for conducting the test.

(3) In determining the date on which a cannabis establishment must have its samples collected by an employee or contractor of a cannabis testing laboratory, the division shall consider the capacity of cannabis testing laboratories to collect and transport samples.

_____ (4) _____ The division may establish different implementation dates for sample collection requirements for:

_____ (a) _____ cannabis producer microbusinesses and integrated cannabis microbusinesses located up to 100 miles by automobile from the nearest licensed cannabis testing laboratory location;

_____ (b) _____ cannabis producers, cannabis manufacturers, and vertically integrated cannabis establishments located up to 200 miles by automobile from the nearest licensed cannabis testing laboratory location;

_____ (c) _____ cannabis producer microbusinesses and integrated cannabis microbusinesses located more than 100 miles by automobile from the nearest licensed cannabis testing laboratory location;

_____ (d) _____ cannabis producers, cannabis manufacturers, and vertically integrated cannabis establishments located more than 200 miles by automobile from the nearest licensed cannabis testing laboratory location; and

_____ (e) _____ cannabis establishments for which travel to a licensed cannabis testing laboratory location requires passing through a United States border patrol checkpoint.

_____ **C. Collection and transportation of samples:** A cannabis testing laboratory is responsible for the collection of samples for the performance of any required test, re-test after a failing result, re-test after remediation, or test for the purposes of labeling.

_____ (1) _____ A cannabis testing laboratory may perform sample collection using:

_____ (a) _____ Laboratory employees with requisite training, as specified in 16.8.2.26 NMAC;

or

_____ (b) _____ Contractors who have completed the sampling agent training offered by the U.S. department of agriculture's domestic hemp production program and sign an affidavit that they have no ownership interest in, and are not employed by, any cannabis establishment that produces or manufactures cannabis. The contractor shall obtain necessary training to comply with the cannabis testing laboratory's protocols, and the cannabis testing laboratory may reject any sample that it suspects was collected outside of its protocols.

_____ (2) _____ A cannabis testing laboratory may transport samples using:

_____ (a) _____ Laboratory employees with requisite training, as specified in 16.8.2.26 NMAC;

or

_____ (b) _____ Contractors who sign an affidavit that they have no ownership interest in, and are not employed by, any cannabis establishment that produces or manufactures cannabis. Transporting cannabis for a cannabis establishment on a contractual basis does not preclude a person or entity from transporting samples in secure containers for cannabis testing laboratories.

_____ (3) _____ Nothing in these rules shall be interpreted to require a cannabis testing laboratory to collect samples from or transport samples on behalf of any cannabis establishment.

_____ (4) _____ If the division has delayed implementation of the requirement that the cannabis testing laboratory collect the sample from a cannabis establishment, based on its distance from the nearest cannabis testing laboratory or location beyond a U.S. border patrol checkpoint, then any person collecting or transporting samples for required testing must receive training in sample collection and transportation protocols.

_____ (a) _____ Nothing in these rules shall be interpreted to require a cannabis testing laboratory to accept samples from a cannabis establishment.

_____ (b) _____ The cannabis testing laboratory may reject any sample that it suspects was collected outside of its protocols.

_____ (5) _____ A cannabis establishment may specify reasonable precautions prevent the contamination of batches of cannabis, except that the cannabis establishment must provide access to the entire batch of cannabis product. Precautions may include, but are not limited to:

_____ (a) _____ requiring the use of gloves and other personal protective equipment

_____ (b) _____ inspecting tools and containers prior to their use;

_____ (c) _____ specifying the location within the cannabis establishment at which the samples will be collected;

_____ (d) _____ specifying locations within the cannabis establishment to which laboratory employees or contractors do not have access; and

_____ (e) _____ the right to refuse entry to any laboratory employee or contractor not in compliance with the precautions

_____ (6) _____ Nothing in these rules shall be interpreted to require routine testing of cannabis products before the cannabis establishment segregates cannabis products into batches and places the batches into containers for storage while awaiting test results.

_____ (7) _____ This Subsection C of 16.8.7.8 NMAC is effective March 1, 2023.

_____ **D. Compliance with all rules and applicable laws required:** Passage of testing does not relieve an establishment of its obligation to comply with the Cannabis Regulation Act, the Lynn and Erin Compassionate Use

Act, the Pesticide Control Act, division rules, or other local, state, and federal laws not in conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.

(1) A cannabis establishment shall waste and dispose of any cannabis product to which a pesticide has been applied in violation of division rules or the Pesticide Control Act or any product manufactured using an unapproved solvent.

(2) Nothing in this rule shall be interpreted as precluding regulatory activities by other state agencies that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.

E. Exceptions to required testing:

(1) A cannabis establishment shall not be required to have tested for pesticide residue any cannabis product made from cannabis concentrate or cannabis extract with verified pesticide residue test results, so long as the establishment can demonstrate that the resulting product will not exceed action levels for that type of cannabis product.

(2) A cannabis establishment shall not be required to have tested a cannabis product acquired from another cannabis establishment if the batch, in present form, was previously determined to have passed the testing requirements of this rule and is accompanied by a *Certificate of Analysis* issued by a licensed cannabis testing laboratory within the previous 90 days.

(3) If additional testing requirements take effect after a cannabis testing laboratory obtains a sample of a cannabis product for required testing, the laboratory is required to perform only those tests required at the time the sample was obtained.

F. Visual inspection: A sample shall pass visual inspection if, under a minimum of 40X magnification, laboratory personnel detect in a one gram sample:

(1) no living or dead insects, hair, eggs, or feces; and

(2) no more than two percent sand, soil, mold, or rocks.

G. Microbiological testing: A sample shall pass microbiological testing if the sample contains concentrations of target microbes not exceeding the action levels set forth in Table 2, *Microbiological Testing Requirements*, below.

(1) The division may require required testing for additional microbes if quality control or inspection testing conducted by cannabis testing laboratories, NMDA, the department of health, or the division identifies their presence, in a quantity or amount that poses a threat to public health, in a cannabis product produced, manufactured, or sold by any cannabis establishment. The division shall provide written notice to licensees 30 days before requiring required testing for additional pesticide residues, except that such notice is not required when human illness is linked to contaminated cannabis products.

(2) The cannabis testing laboratory may report a collective total of the four *Aspergillus* strains listed without distinguishing individual totals.

(3) The test results shall be reported as "Present," "Absent," or in colony forming units (CFU) per one gram sample.

(4) Testing for shiga-toxin producing *E. coli*, *Clostridium botulinum*, and *Pseudomonas aeruginosa* is effective July 1, 2022.

Table 2. Microbiological Testing Requirements

Target Microbe	Action Level
* <i>E. coli</i>	100 CFU/gram
<i>Aspergillus flavus</i> , <i>Aspergillus fumigatus</i> , <i>Aspergillus niger</i> , or <i>Aspergillus terreus</i>	Present in 1 gram
<i>Salmonella</i> spp.	Present in 1 gram
†Shiga-toxin-producing <i>E. coli</i>	Present in 1 gram
† <i>Clostridium botulinum</i>	Present in 1 gram
† <i>Pseudomonas aeruginosa</i>	Present in 1 gram
<p>*Cannabis product may be tested for shiga-toxin producing <i>E. coli</i>, rather than generic <i>E. coli</i>. †Testing for shiga-toxin producing <i>E. coli</i>, <i>Clostridium botulinum</i>, and <i>Pseudomonas aeruginosa</i> is required only for edible cannabis products manufactured from fresh cannabis with a water activity of 0.65 or greater.</p>	

H. Residual solvent testing: A sample shall pass residual solvent testing if the sample contains concentrations of residual solvents lower than the action levels set forth in Table 3, *Residual Solvent Testing Requirements*, below. The test results shall be reported as described in the notes to Table 3.

Table 3. Residual Solvent Testing Requirements

Target Compounds	Common Chemical Name	IUPAC Name	CAS Number	Action Level*
Propane	Propane	Propane	74-98-6	5000
Butanes	n-butane	Butane	106-97-8	5000
	Isobutane	2-methylpropane	75-28-5	5000
Pentane	n-pentane	Pentane	109-66-0	5000
Hexane	n-hexane	Hexane	110-54-3	290
Benzene	Benzene	Benzene	71-43-2	2.0
Toluene	Toluene	Methylbenzene	108-88-3	890
Heptane	n-heptane	Heptane	142-82-5	5000
Ethylbenzene and Xylenes	Ethylbenzene	Ethylbenzene	100-41-4	2170-Total
	ortho-xylene	1,2-dimethylbenzene	95-47-6	
	meta-xylene	1,3-dimethylbenzene	108-38-3	
	para-xylene	1,4-dimethylbenzene	106-42-3	
Ethanol†	ethyl alcohol	Ethanol	64-17-5	5000
Methanol	methyl alcohol	Methanol	67-56-1	3000
Isopropanol	Isopropyl alcohol	2-propanol	67-63-0	5000
Acetone	Acetone	2-propanone	67-64-1	5000

Use two significant digits when reporting residual solvent results.

Report levels less than the Limit of Quantitation for each solvent according to the following example::

"Benzene < 2.0 µg/g"

*Micrograms solvent per gram (µg/g) of sample/parts per million (ppm).

†Unless exempt from testing.

I. Potency and homogeneity testing:

(1) Potency testing requires determining the quantity of tetrahydrocannabinol (THC), tetrahydrocannabinolic acid (THCA), cannabidiol (CBD), cannabidiolic acid (CBDA) per gram of sample and the calculation of THC potency and CBD potency, according to Table 4, *Potency Testing Requirements*, below.

(2) Batch-level homogeneity testing is performed by testing for total THC potency. The number of samples to be tested shall be based on the size of the batch according to the method validated by the cannabis testing laboratory; however, the total number of samples tested shall be not less than three for any batch of material five pounds or less.

(3) Product-level homogeneity testing is performed by segregating a single retail package or an identical quantity of a solid or semi-solid and testing for total THC potency a minimum of three randomly selected increments of the product.

(4) A set of samples shall pass homogeneity testing if the relative standard deviation of total THC potency of the samples is no more than twenty percent.

Table 4. Potency Testing Requirements

Cannabinoid	Abbreviation	CAS Number	Reporting Units
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Tetrahydrocannabinolic Acid	THCA	23978-85-0	<u>For solids:</u> mg of analyte/ gram of sample and percentage by weight
Tetrahydrocannabinol	THC	1972-08-3	
Cannabidiolic Acid	CBDA	1244-58-2	
Cannabidiol	CBD	13956-29-1	<u>For liquids:</u> mg/ml
Total THC Potency (solids)	THC Potency = (Percent THCA × 0.877) + Percent THC		Percentage by weight
Total CBD Potency (solids)	CBD Potency = (Percent CBDA × 0.877) + Percent CBD		
Total THC Potency (liquids)	THC Potency = (mg/ml THCA × 0.877) + mg/ml THC		mg/ml
Total CBD Potency (liquids)	CBD Potency = (mg/ml CBDA × 0.877) + mg/ml CBD		

J. Pesticide testing: A sample shall pass pesticide testing if concentrations of residues of pesticides are lower than the action levels listed in Table 5, *Pesticide Testing Requirements*, below:

(1) The division may adopt required testing for additional pesticide residues if quality control or inspection testing conducted by cannabis testing laboratories, NMDA, the Department of Health, or the division identifies their presence in a cannabis product produced or manufactured by any cannabis establishment. The division shall provide written notice to licensees 30 days before implementing required testing for additional pesticide residues.

(2) Nothing in this section shall be interpreted to waive or diminish any requirement of the Pesticide Control Act, §§76-4-1 et seq. NMSA 1978. The division, alone or in conjunction with NMDA, may investigate any suspected use of a pesticide not registered with NMDA for use on cannabis.

(3) This Subsection J of 16.8.7.8 NMAC is effective July 1, 2022.

Table 5. Pesticide Testing Requirements

Targeted Pesticide	CAS Number	Action Level: Inhalable*	Action Level: Non-Inhalable*
†Abamectin	71751-41-2	0.1	0.15
†Acequinocyl	57960-19-7	2.0	2.0
†Bifenazate	149877-41-8	0.2	0.2
†Bifenthrin	82657-04-3	0.1	0.1
†Etoxazole	153233-91-1	0.1	1.0
†Imazalil	35554-44-0	0.1	0.1
†Imidacloprid	138261-41-3	0.1	3.0
†Myclobutanil	88671-89-0	0.1	0.4
†Paclobutrazol	76738-62-0	0.04	0.04
Piperonyl butoxide	51-03-6	3.0	8.0
†Pyrethrins (cumulative total)	121-21-1 25402-06-6 4466-14-2	0.5	1.0
†Spinosyn A, D (cumulative total)	131929-60-7 131929-63-0	0.1	3.0
†Spiromesifen	283594-90-1	0.1	0.2
†Spirotetramat	203313-25-1	0.1	0.2
†Trifloxystrobin	141517-21-7	0.02	0.02
Other pesticide not registered with NMDA for use on cannabis	Varies	0.02	0.02

*Micrograms of pesticide per gram (µg/g) of sample/parts per million (ppm).

Report levels less than the Limit of Quantitation for each pesticide residue according to the following example:

"Paclobitrazol < 0.4 µg/g"

†Not registered with NMDA for use on cannabis.

K. Release of

batch after testing: A cannabis establishment may release an entire batch of cannabis product for immediate manufacture, sale, or other use, provided that the sample taken from the batch passes the tests required in this section.

L. Procedures for

testing: A cannabis establishment shall adhere to the following procedures:

(1) After collection of samples, a batch of cannabis product shall be segregated in a secure container and stored under controlled environmental conditions (temperature, humidity, light) designed to limit microbial growth or other spoilage until the cannabis establishment receives a certificate of analysis indicating the batch meets the testing requirements of this rule.

(2) The secured container shall be labeled with the identification number used in the track and trace system, the name of the cannabis testing laboratory, the date on which the samples were taken, and, in minimum 12-point font, all capital letters, "AWAITING TEST RESULTS. DO NOT TRANSFER."

(3) The cannabis testing laboratory and the cannabis establishment submitting samples each shall appropriately document in the track and trace system the sampling and testing of cannabis product.

(4) A cannabis establishment shall maintain all results of laboratory tests conducted on cannabis products produced or manufactured by the cannabis establishment for a period of at least two years and shall make those results available to consumers or cannabis retailers upon request.

M. Re-testing:

If a sample fails any test, the cannabis establishment may request re-testing by the same cannabis testing laboratory or another cannabis testing laboratory. If the repeated test is within acceptable limits, then the batch may be sold, transferred, or further manufactured.

N. Remediation:

Within 120 days of a failed test, a cannabis establishment may remediate and retest the batch according to the procedures described in this subsection. A cannabis establishment shall adopt and maintain on the premises protocols regarding remediation consistent with this rule.

(1) A cannabis establishment may remediate dried cannabis or cannabis concentrates that fail microbiological testing by means of extraction using an approved volatile solvent. Other products that fail microbiological testing may not be remediated.

(2) A cannabis establishment may remediate any cannabis product that fails homogeneity testing through any approved manufacturing process, including extraction, chopping, melting, mixing, infusing, or otherwise combining the batch.

(3) A cannabis establishment may remediate any cannabis product that fails residual solvent testing by evaporating solvent using heat, vacuum pressure, or a combination of methods.

(4) A cannabis establishment may remediate cannabis that fails visual inspection for the presence of mold by means of extraction using an approved volatile solvent.

(5) A cannabis establishment may remediate cannabis that fails visual inspection for the presence of insects, hair, eggs, or feces by removing the contaminants, followed by extraction using an approved volatile solvent.

(6) A cannabis establishment may remediate cannabis that fails visual inspection for the presence of soil or rocks by removing the contaminants.

(7) Cannabis product that has been remediated must undergo any test that was previously failed.

(8) Cannabis product that has been remediated with the use of volatile solvents must additionally undergo residual solvent testing.

O. Notice and

destruction: Any cannabis product that fails a test and cannot be remediated, including any remediated cannabis product that fails any test after remediation, is subject to destruction in accordance with the wastage requirements of 16.8.2.15 NMAC. The cannabis establishment shall notify the division within 24 hours and shall confirm the wastage and disposal of the usable cannabis in accordance with this rule. The wasted product shall be removed from inventory, and the removal from inventory shall be noted in the track and trace system.

P. Interpretation of

differing results: Results produced by a cannabis testing laboratory are valid only for the sample tested. A differing result produced by quality control or inspection testing of a different sample pursuant to 16.8.2.16 NMAC is not grounds for action against the cannabis testing laboratory that produced the original testing result.]

GENERAL TRACKING

REQUIREMENTS: In addition to any requirements specific to tracking within each license type, all licensees of cannabis establishments must meet minimum requirements.

A. Tracking

immature cannabis plants: licensees must track, using the track and trace system specified by the division, cannabis plants as follows:

(1) each immature plant shall be assigned a plant tag with an individual track and trace number and shall be:

(a) placed contiguous to one another to facilitate identification by the division; and

(b) be fully separated from mature plants.

(2) Immature plants transferred from one licensee to another shall be labeled with the track and trace number that corresponds to the track and trace number. The receiving licensee shall remove the originating licensee's tag and assign a plant or package tag, as applicable, belonging to the receiving

licensee within three calendar days of receiving the immature plants.

B. Tracking mature cannabis plants: mature cannabis plants shall be tagged as follows:

(1) Each mature plant shall be tagged with a plant tag. A plant tag shall be attached to the main stem at the base of the plant, placed in a position so it is visible and within clear view of an individual standing next to the mature plant, and kept free from dirt and debris.

(2) Licensees are prohibited from removing the plant tag from the mature plant to which it was attached and assigned until the plant is harvested, destroyed, or disposed of.

C. Tracking cannabis and cannabis products: licensees must track, using the track and trace system specified by the division, cannabis and cannabis products according to packaging and labeling requirements set forth in 16.8.3 NMAC.

D. Additional recorded information: in addition to any tracking requirements specific to license type or cannabis product type, a licensee must ensure the following data is properly recorded in the tracking system:

(1) a complete inventory of all cannabis and cannabis products in the possession, control or ownership of the licensee;

(2) any changes to the licensee's inventory of any cannabis or cannabis products;

(3) when cannabis material is converted to waste

(4) when cannabis waste is destroyed;

(5) when an authorized transfer of cannabis or cannabis product occurs;

(6) any theft of cannabis or cannabis products;

(7) all sales records of cannabis or cannabis product;

(8) all mandatory cannabis or cannabis product testing results;

(9) the county and municipality, if applicable, where the cannabis or cannabis product was harvested, otherwise cultivated, manufactured, tested, sold to other licensees, sold to consumers and disposed of or destroyed; and

(10) other information required by the tracking system or specified by the division.

(11) cannabis material in segregation while testing occurs.

[16.8.7.8 NMAC – N, 3/1/2022; A/E, 03/10/2022; Rp, 16.8.7.8 NMAC, 07/12/2022]

16.8.7.9 [ADDITIONAL TESTING SERVICES OFFERED BY CANNABIS TESTING LABORATORIES:

A cannabis testing laboratory may offer cannabis establishments testing for quality improvement, research and development, or labeling purposes. A cannabis testing laboratory may also offer testing to persons other than cannabis establishments as provided in this section.

A. Research and development testing for cannabis establishments:

A cannabis testing laboratory may offer to cannabis establishments any required test or any additional test for the purpose of research and development or for quality-control measures requested by a cannabis establishment.

(1) The cannabis establishment may collect the sample, or an agent of the cannabis testing laboratory may collect the sample.

(2) If a cannabis establishment requests testing for research and development purposes, the results may not be used to satisfy any required testing requirement, even if the sample passes all tests.

(3) The failure of a test for research and development purposes shall not constitute a failed test.

(4) The results of a test conducted for research and development purposes shall not be included on a product label or advertisement.

B. Testing for the purposes of labeling by cannabis establishments: A cannabis testing laboratory may offer to cannabis establishments additional tests not included in required testing for the purposes of product labeling, including quantitation of specific pesticides, microbial contaminants, solvents, mycotoxins, or metals.

(1) An agent of the cannabis testing laboratory shall collect the samples according to the laboratory's protocols.

(2) A label may include a reference to concentrations of compounds not subject to required testing, including terpenes, terpenoids, or additional cannabinoids.

(3) A label may include a reference to the passage of cannabis screenings, including one or more of the following:

(a) naming the contaminants for which screening was performed;

(b) providing a link or QR code to the list of contaminants for which the cannabis product was screened; or

(c) a statement that the product has met third-party screening criteria, such as those established by an industry association, except that no label shall contain claims that a cannabis product is "pesticide free" or "organic" unless such labeling is specifically authorized under U.S. department of agriculture regulations.

C. Reporting of contamination: Nothing in this rule shall be interpreted to require a cannabis testing laboratory to offer testing for analytes not included in required testing. However, a cannabis testing facility shall report to the division, without naming the source of the sample, the detection of any of the following analytes in the course of testing for research and development or labeling purposes:

(1) aflatoxin B1, B2, G1, and G2 and ochratoxin A, at a total concentration of 20 µg/kg (parts per billion) or greater;

(2) arsenic,

cadmium, lead, or mercury, at a concentration of 0.4 µg/g (parts per million) or greater;

~~(3) the residue of any pesticide not required to be tested or not registered in New Mexico for use on cannabis, at any level detectable by the cannabis testing laboratory's methodology; or~~

~~(4) any microorganism not required to be tested at a level that poses a significant threat to human health.~~

~~**D. Research and development testing in connection with personal use or medical use of Cannabis.** A cannabis testing laboratory may perform any test on a sample of cannabis product for any resident of New Mexico who is at least 21 years of age and represents in writing that the cannabis product is for the personal use or medical use of the person submitting the sample or a person for whom the person submitting the sample is acting as a primary caregiver. The cannabis testing laboratory shall provide guidance on sample collection but shall not collect samples onsite.~~

~~**E. Testing services to entities operated or licensed by a tribal government.** A cannabis testing laboratory may perform any test on a sample of cannabis product for any entity located within New Mexico and operated or licensed by a tribal government with which the division has an intergovernmental agreement covering cannabis testing. If the intergovernmental agreement permits such entities to collect and submit samples, the cannabis testing laboratory shall provide guidance on sample collection. Otherwise, an agent of the laboratory shall collect samples.~~

~~**F. Testing services for the division or other governmental entities.** A cannabis testing laboratory may, but is not required to, perform any test on behalf of the division, NMDA, another state agency, or a state or local law enforcement authority acting within its lawful jurisdiction.]~~

IMPLEMENTATION AND ADMINISTRATION OF TRACKING SYSTEM:

A. Operational
account: a licensee must have a track and trace system account activated and functional prior to operating or exercising any privileges of a license. The licensee shall keep and maintain comprehensive records to ensure adequate inventory tracking of any cannabis or cannabis products.

B. System
administrator required: each licensee must designate at least one individual as a track and trace system administrator.

C. System training: in order to obtain a track and trace system administrator account, a licensee or its designee must attend and successfully complete all required track and trace system training. A licensee may apply for an account and training once they receive a license from the division.

D. Continuing
education: The division may also require additional ongoing, continuing education for the track and trace system administrator to retain their track and trace system administrator account.

E. Responsible for
cost: each licensee is responsible for all costs associated with its use of the tracking system and any associated vendor fees.

F. Additional users: a licensee may designate additional individuals as track and trace system users. The licensee shall ensure that all individuals who are granted track and trace system user account access for the purposes of conducting track and trace functions in the system are trained by an track and trace system administrator in the proper and lawful use of the track and trace system.

[16.8.7.9 NMAC – N, 3/1/2022; Rp, 16.8.7.9 NMAC, 07/12/2022]

16.8.7.10

[PREVENTION OF HEAVY METAL CONTAMINATION:

A cannabis establishment shall adhere to the following quality control standards for the

production and manufacturing of cannabis:

A. Growing media:

The cannabis establishment shall maintain, and make available for division inspection, records of all growing media purchased.

B. Water: If using for irrigation water from a non-municipal source, a cannabis establishment shall maintain quarterly testing data indicating concentrations at or below the action levels in Table 1, *Heavy Metal Testing Requirements for Water and Soil*, below:

C. Soil: If growing cannabis directly in the ground, the cannabis establishment shall submit at least annually representative soil samples to a laboratory for analysis of arsenic, cadmium, lead, and mercury levels and shall retain a certificate of analysis for inspection by the division. If the concentration of any heavy metal exceeds the action levels in Table 1, *Heavy Metal Testing Requirements for Water and Soil*, below, the cannabis establishment shall remediate the soil and shall not produce additional plants until soil concentrations are below the applicable action levels.

D. Choice of laboratories: The cannabis establishment may submit water or soil samples to any laboratory in the United States offering water or soil analysis for the four required analytes:

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[Table 1. Heavy Metal Testing Requirements for Water and Soil]

Analyte	Symbol	CAS Number	Action Level: Soil*	Action Level: Water†
Arsenic	As	7440-38-2	4.25	10.0
Cadmium	Cd	7440-43-9	7.05	5.0
Lead	Pb	7439-92-1	400	15.0
Mercury	Hg	7439-97-6	2.38	2.0

*Reported in micrograms per gram (µg/g) of sample/parts per million (ppm). Based on New Mexico Environment Department's *Risk Assessment Guidance for Site Investigations and Remediation*.

†Reported in micrograms per liter (µg/L) of sample. Based on U.S. Environmental Protection Agency's maximum contaminant levels.]

GENERAL TRACK AND TRACE SYSTEM USE:

A. System required: all track and trace activities of a licensee must be tracked through use of the track and trace system. Licensees must reconcile all on-premises and in-transit cannabis or cannabis products each day in the track and trace system by 11:59 p.m. that same day. Track and trace system software must then be synchronized by the licensee prior to closing the session (as applicable).

B. Weights and measures: licensees must utilize a standard of weights and measures that is supported by the track and trace system to track all cannabis or cannabis products. A scale used to weigh product prior to entry into the track and trace system shall be certified to be registered and calibrated in accordance with applicable requirements of the New Mexico department of agriculture

C. System security: licensees shall maintain the security of the track and trace system, as follows:

- (1) maintain an accurate and complete list of all track and trace system users for each licensed premise;
- (2) update this list when a new track and trace system user is trained or when an existing user is removed;
- (3) train and authorize any new track and trace system users before they may access track and trace system or input, modify or delete any information in the track and trace system; and
- (4) cancel any track and trace system administrators and track and trace system users from their associated track and trace system accounts once any such individuals are no longer employed by the licensee or at the licensed premises.

D. Responsible for employee actions: licensees are accountable for all actions employees take while logged into the track and trace system or otherwise conducting cannabis or cannabis product inventory tracking activities.

E. Responsible for individual actions: each individual user is also accountable for all of their actions while logged into the track and trace system or otherwise conducting cannabis or cannabis product inventory tracking activities, and shall maintain compliance with all relevant laws and division rules.

F. Use of appropriate account: each individual user shall only log activities in the track and trace system under the user's own unique track and trace system user account.

G. Additional software allowed: licensees may use separate software applications to collect information to be used by the business, including additional inventory tracking or point of sale systems.

[16.8.7.10 NMAC – N, 3/1/2022; Rp, 16.8.7.10 NMAC, 07/12/2022]

16.8.7.11 CONDUCT WHILE USING TRACK AND TRACE SYSTEM:

A. Licensees or designated track and trace administrator(s) and track and trace system user(s) shall enter data into the track and trace system that fully and transparently accounts for all inventory tracking activities and authorized transfers. Both the licensee and the individuals using the track and trace system are responsible for the accuracy of all information entered into the track and trace system.

B. Individuals entering data into the track and trace system shall only use that individual's track and trace system account.

C. If at any point a licensee loses access to the track and trace system for any reason, the licensee or track and trace system administrator shall immediately notify the division and shall keep and maintain comprehensive records detailing all cannabis or cannabis product track and trace activities that occurred during the loss of access. These track

and trace activities must be entered into the track and trace system and the division shall be notified that access has been restored. Licensees must document when access to the system was lost, the cause of system loss and when it was restored. Licensee shall not transport or receive any cannabis or cannabis product to or from another cannabis establishment until such time as access is restored and all information is recorded into the track and trace system.

[16.8.7.11 NMAC – Rp, 16.8.7.11 NMAC, 07/12/2022]

16.8.7.12 COMPLIANCE NOTIFICATIONS:

A. Monitor

notifications: licensees must monitor all compliance notifications from the track and trace system or the division and must resolve any issue(s) detailed in the compliance notification in a timely fashion. Compliance notifications from the track and trace system shall not be dismissed in the track and trace system until the licensee resolves the compliance issues detailed in the notification.

B. Monitor

informational notifications:

licensees must take appropriate action in response to informational notifications received through the track and trace system or the division including but not limited to notifications related to enforcement alerts and other pertinent information. [16.8.7.12 NMAC - N, 07/12/2022]

16.8.7.13 LAWFUL

ACTIVITY REQUIRED: Proper use of the track and trace system does not relieve a licensee of its responsibility to maintain compliance with all laws, rules and other requirements at all times.

[16.8.7.13 NMAC - N, 07/12/2022]

16.8.7.14 TRACK AND TRACE SYSTEM PROCEDURES:

A. Conformity of

use: licensees must utilize the track and trace system in conformance with division rule and track and trace system procedures.

B. Track and trace procedures include:

(1) properly indicating the creation of a harvest batch or production batch including the assigned harvest batch or production batch number;

(2) accurately identifying the cultivation room or outdoor location where each plant is located on the licensed premises;

(3) accurately identifying when inventory is no longer on the licensed premises;

(4) properly identifying cannabis or cannabis products identified as test batch;

(5) properly indicating test results from a cannabis testing laboratory;

(6) accurately indicating the track and trace system category for all cannabis or cannabis products;

(7) accurately including a note explaining the reason for any destruction of cannabis or cannabis products, and the reason for any adjustment in weight or count to inventory in the track and trace system software; and

(8) properly assigning unique identifying tracking numbers to each cannabis plant, cannabis product and any batch, lot, or subplot from such cannabis plant(s) and cannabis product(s).

[16.8.7.14 NMAC - N, 07/12/2022]

16.8.7.15 REQUIRED TESTING OF CANNABIS PRODUCTS:

A cannabis establishment shall segregate a batch of cannabis product and arrange for samples to be collected and tested by a cannabis testing laboratory if required by this section. The batch must pass all required tests prior to the sale or delivery to a qualified patient, primary caregiver or consumer.

A. Required

testing: Unless an exception applies:

(1)

A cannabis producer, cannabis producer microbusiness, vertically integrated cannabis

establishment, or integrated cannabis microbusiness shall arrange for and pay for the testing specified in Table 1, *Required Testing of Cannabis Products*, below, of any cannabis flower and trim that it harvests prior to:

(a)

packaging for retail sale;

(b)

transfer to another cannabis establishment for the purposes of retail sale;

(c)

retail sale; or

(d)

delivery to a patient or consumer.

(2) A

cannabis manufacturer, vertically integrated cannabis establishment, or integrated cannabis microbusiness shall arrange for and pay for the testing specified in Table 1 of any cannabis product, including but not limited to a concentrate or extract, that it manufactures prior to:

(a)

packaging for retail sale

(b)

transfer to another cannabis establishment for the purposes or retail sale;

(c)

retail sale; or

(d)

delivery to a qualified patient, primary caregiver or consumer.

(3)

A cannabis retailer, vertically integrated cannabis establishment, or integrated cannabis microbusiness shall not sell or deliver to a patient or consumer any cannabis product unless the cannabis product has undergone all testing required by this section.

(4) Testing

for homogeneity will be required beginning April 1, 2024.

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Table 1, Required Testing of Cannabis Products

<u>Product category</u>	<u>Potency</u>	<u>Homogeneity of Batch</u>	<u>Visual Inspection</u>	<u>Microbiological</u>	<u>Residual Pesticides</u>	<u>Residual Solvents</u>
<u>Flower</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	
<u>Trim</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	
<u>Concentrate (volatile solvent)</u>	<u>X</u>			<u>X</u>	<u>X</u>	<u>X</u>
<u>Kief</u>	<u>X</u>		<u>X</u>	<u>X</u>	<u>X</u>	
<u>Pre-rolls</u>	<u>X</u>			<u>X</u>	<u>X</u>	
<u>Concentrate (non-volatile solvent)</u>	<u>X</u>		<u>X</u>	<u>X</u>	<u>X</u>	
<u>Extract – alcohol</u>	<u>X</u>			<u>X</u>	<u>X</u>	
<u>Extract – other liquid</u>	<u>X</u>			<u>X</u>	<u>X</u>	
<u>Topical</u>	<u>X</u>			<u>X</u>		
<u>Edible</u>	<u>X</u>			<u>X</u>	*	
<u>Other inhalable</u>	<u>X</u>				*	<u>X</u>
<u>Other</u>	<u>X</u>			<u>X</u>	*	<u>X</u>

*Pesticide testing required unless exempted by Subsection E, below.

B. Staggered implementation:

(1) The division may within its discretion delay implementation of sample collection and testing requirements of this section, in whole or in part.

(2) In determining the start date of an individual testing requirement, the division shall consider whether a cannabis testing laboratory has validated a method for conducting the test.

(3) In determining the date on which a cannabis establishment must have its samples collected by an employee or contractor of a cannabis testing laboratory, the division shall consider the capacity of cannabis testing laboratories to collect and transport samples.

(4) The division may establish different implementation dates for sample collection requirements for:

(a) cannabis producer microbusinesses and integrated cannabis microbusinesses located up to 100 miles by automobile from the nearest licensed cannabis testing laboratory location;

(b) cannabis producers, cannabis manufacturers, and vertically integrated cannabis establishments located up to 200 miles by automobile from the nearest licensed cannabis testing laboratory location;

(c) cannabis producer microbusinesses and integrated cannabis microbusinesses located more than 100 miles by automobile from the nearest licensed cannabis testing laboratory location;

(d) cannabis producers, cannabis manufacturers, and vertically integrated cannabis establishments located more than 200 miles by automobile from the nearest licensed cannabis testing laboratory location; and

(e) cannabis establishments for which travel to a licensed cannabis testing laboratory location requires passing through a United States border patrol checkpoint.

C. Collection and transportation of samples: A cannabis testing laboratory is responsible for the collection of samples for the performance of any required test, re-test after a failing result, re-test after remediation, or test for the purposes of labeling.

(1) A cannabis testing laboratory may perform sample collection using:

(a) Laboratory employees with requisite training, as specified in 16.8.2.26 NMAC;
or

(b) Contractors who have completed the sampling agent training offered by the U.S. department of agriculture's domestic hemp production program and sign an affidavit that they have no ownership interest in, and are not employed by, any cannabis establishment that produces or manufactures cannabis. The contractor shall obtain necessary training to comply with the cannabis testing laboratory's protocols, and the cannabis testing laboratory may reject any sample that it suspects was collected outside of its protocols.

(2) A cannabis testing laboratory may transport samples using:

(a)

Laboratory employees with requisite training, as specified in 16.8.2.26 NMAC; or

(b)

Contractors who sign an affidavit that they have no ownership interest in, and are not employed by, any cannabis establishment that produces or manufactures cannabis. Transporting cannabis for a cannabis establishment on a contractual basis does not preclude a person or entity from transporting samples in secure containers for cannabis testing laboratories.

(3) Nothing

in these rules shall be interpreted to require a cannabis testing laboratory to collect samples from or transport samples on behalf of any cannabis establishment.

(4) If the

division has delayed implementation of the requirement that the cannabis testing laboratory collect the sample from a cannabis establishment, based on its distance from the nearest cannabis testing laboratory or location beyond a U.S. border patrol checkpoint, then any person collecting or transporting samples for required testing must receive training in sample collection and transportation protocols.

(a)

Nothing in these rules shall be interpreted to require a cannabis testing laboratory to accept samples from a cannabis establishment.

(b)

The cannabis testing laboratory may reject any sample that it suspects was collected outside of its protocols.

(5)

A cannabis establishment may specify reasonable precautions prevent the contamination of batches of cannabis, except that the cannabis establishment must provide access to the entire batch of cannabis product. Precautions may include, but are not limited to:

(a)

requiring the use of gloves and other personal protective equipment

(b)

inspecting tools and containers prior to their use;

(c)

specifying the location within the cannabis establishment at which the samples will be collected;

(d)

specifying locations within the cannabis establishment to which laboratory employees or contractors do not have access; and

(e)

the right to refuse entry to any laboratory employee or contractor not in compliance with the precautions

(6) Nothing

in these rules shall be interpreted to require routine testing of cannabis products before the cannabis establishment segregates cannabis products into batches and places the batches into containers for storage while awaiting test results.

(7) This

Subsection C of 16.8.7.8 NMAC is effective March 1, 2023.

D. Compliance

with all rules and applicable laws required:

Passage of testing does not relieve an establishment of its obligation to comply with the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, the Pesticide Control Act, division rules, or other local, state, and federal laws not in conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.

(1) A cannabis

establishment shall waste and dispose of any cannabis product to which a pesticide has been applied in violation of division rules or the Pesticide Control Act or any product manufactured using an unapproved solvent.

(2) Nothing

in this rule shall be interpreted as precluding regulatory activities by other state agencies that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.

E. Exceptions to

required testing:

(1) A cannabis

establishment shall not be required to

have tested for pesticide residue any cannabis product made from cannabis concentrate or cannabis extract with verified pesticide residue test results, so long as the establishment can demonstrate that the resulting product will not exceed action levels for that type of cannabis product.

(2) A cannabis

establishment shall not be required to have tested a cannabis product acquired from another cannabis establishment if the batch, in present form, was previously determined to have passed the testing requirements of this rule and is accompanied by a *Certificate of Analysis* issued by a licensed cannabis testing laboratory within the previous 90 days.

(3) If

additional testing requirements take effect after a cannabis testing laboratory obtains a sample of a cannabis product for required testing, the laboratory is required to perform only those tests required at the time the sample was obtained.

F. Visual inspection:

A sample shall pass visual inspection if, under a minimum of 40X magnification, laboratory personnel detect in a one gram sample:

(1) no living

or dead insects, hair, eggs, or feces; and

(2) no more

than two percent sand, soil, mold, or rocks.

G. Microbiological

testing: A sample shall pass microbiological testing if the sample contains concentrations of target microbes not exceeding the action levels set forth in Table 2, *Microbiological Testing Requirements*, below.

(1) The

division may require required testing for additional microbes if quality control or inspection testing conducted by cannabis testing laboratories, NMDA, the department of health, or the division identifies their presence, in a quantity or amount that poses a threat to public health, in a cannabis product produced, manufactured, or sold by any cannabis establishment. The division shall

provide written notice to licensees 30 days before requiring required testing for additional pesticide residues, except that such notice is not required when human illness is linked to contaminated cannabis products.

(2) The cannabis testing laboratory may report a collective total of the four *Aspergillus* strains listed without distinguishing individual totals.

(3) The test results shall be reported as “Present,” “Absent,” or in colony forming units (CFU) per one gram sample.

(4) Testing for shiga-toxin producing *E. coli*, *Clostridium botulinum*, and *Pseudomonas aeruginosa* is effective July 1, 2022.

Table 2. Microbiological Testing Requirements

<u>Target Microbe</u>	<u>Action Level</u>
<u>*E. coli</u>	<u>100 CFU/gram</u>
<u>Aspergillus flavus, Aspergillus fumigatus, Aspergillus niger, or Aspergillus terreus</u>	<u>Present in 1 gram</u>
<u>Salmonella spp.</u>	<u>Present in 1 gram</u>
<u>†Shiga-toxin producing E. coli</u>	<u>Present in 1 gram</u>
<u>†Clostridium botulinum</u>	<u>Present in 1 gram</u>
<u>†Pseudomonas aeruginosa</u>	<u>Present in 1 gram</u>
<p>*Cannabis product may be tested for shiga-toxin producing <i>E. coli</i>, rather than generic <i>E. coli</i>. †Testing for shiga-toxin producing <i>E. coli</i>, <i>Clostridium botulinum</i>, and <i>Pseudomonas aeruginosa</i> is required only for edible cannabis products manufactured from fresh cannabis with a water activity of 0.65 or greater.</p>	

H. Residual solvent testing: A sample shall pass residual solvent testing if the sample contains concentrations of residual solvents lower than the action levels set forth in Table 3, *Residual Solvent Testing Requirements*, below. The test results shall be reported as described in the notes to Table 3.

Table 3. Residual Solvent Testing Requirement

<u>Target Compounds</u>	<u>C o m m o n Chemical Name</u>	<u>IUPAC Name</u>	<u>CAS Number</u>	<u>Action Level*</u>
<u>Propane</u>	<u>Propane</u>	<u>Propane</u>	<u>74-98-6</u>	<u>5000</u>
<u>Butanes</u>	<u>n-butane</u>	<u>Butane</u>	<u>106-97-8</u>	<u>5000</u>
	<u>Isobutane</u>	<u>2-methylpropane</u>	<u>75-28-5</u>	<u>5000</u>
<u>Pentane</u>	<u>n-pentane</u>	<u>Pentane</u>	<u>109-66-0</u>	<u>5000</u>
<u>Hexane</u>	<u>n-hexane</u>	<u>Hexane</u>	<u>110-54-3</u>	<u>290</u>
<u>Benzene</u>	<u>Benzene</u>	<u>Benzene</u>	<u>71-43-2</u>	<u>2.0</u>
<u>Toluene</u>	<u>Toluene</u>	<u>Methylbenzene</u>	<u>108-88-3</u>	<u>890</u>
<u>Heptane</u>	<u>n-heptane</u>	<u>Heptane</u>	<u>142-82-5</u>	<u>5000</u>
<u>Ethylbenzene and Xylenes</u>	<u>Ethylbenzene</u>	<u>Ethylbenzene</u>	<u>100-41-4</u>	<u>2170 Total</u>
	<u>ortho-xylene</u>	<u>1,2-dimethylbenzene</u>	<u>95-47-6</u>	
	<u>meta-xylene</u>	<u>1,3-dimethylbenzene</u>	<u>108-38-3</u>	
	<u>para-xylene</u>	<u>1,4-dimethylbenzene</u>	<u>106-42-3</u>	
<u>Ethanol†</u>	<u>ethyl alcohol</u>	<u>Ethanol</u>	<u>64-17-5</u>	<u>5000</u>
<u>Methanol</u>	<u>methyl alcohol</u>	<u>Methanol</u>	<u>67-56-1</u>	<u>3000</u>

Isopropanol	Isopropyl alcohol	2-propanol	67-63-0	5000
Acetone	Acetone	2-propanone	67-64-1	5000

Use two significant digits when reporting residual solvent results.

Report levels less than the Limit of Quantitation for each solvent according to the following example::

"Benzene < 2.0 µg/g"

*Micrograms solvent per gram (µg/g) of sample/parts per million (ppm).

†Unless exempt from testing.

I. Potency and homogeneity testing:

(1) Potency testing requires determining the quantity of tetrahydrocannabinol (THC), tetrahydrocannabinolic acid (THCA), cannabidiol (CBD), cannabidiolic acid (CBDA) per gram of sample and the calculation of THC potency and CBD potency, according to Table 4, *Potency Testing Requirements*, below.

(2) Batch-level homogeneity testing is performed by testing for total THC potency. The number of samples to be tested shall be based on the size of the batch according to the method validated by the cannabis testing laboratory; however, the total number of samples tested shall be not less than three for any batch of material five pounds or less.

(3) Product-level homogeneity testing is performed by segregating a single retail package or an identical quantity of a solid or semi-solid and testing for total THC potency a minimum of three randomly selected increments of the product.

(4) A set of samples shall pass homogeneity testing if the relative standard deviation of total THC potency of the samples is no more than twenty percent.

Table 4. Potency Testing Requirements

<u>Cannabinoid</u>	<u>Abbreviation</u>	<u>CAS Number</u>	<u>Reporting Units</u>
<u>Tetrahydrocannabinolic Acid</u>	<u>THCA</u>	<u>23978-85-0</u>	<u>For solids: mg of analyte/gram of sample and percentage by weight</u>
<u>Tetrahydrocannabinol</u>	<u>THC</u>	<u>1972-08-3</u>	
<u>Cannabidiolic Acid</u>	<u>CBDA</u>	<u>1244-58-2</u>	
<u>Cannabidiol</u>	<u>CBD</u>	<u>13956-29-1</u>	<u>For liquids: mg/ml</u>
<u>Total THC Potency (solids)</u>	<u>THC Potency = (Percent THCA × 0.877) + Percent THC</u>		<u>Percentage by weight</u>
<u>Total CBD Potency (solids)</u>	<u>CBD Potency = (Percent CBDA × 0.877) + Percent CBD</u>		
<u>Total THC Potency (liquids)</u>	<u>THC Potency = (mg/ml THCA × 0.877) + mg/ml THC</u>		<u>mg/ml</u>
<u>Total CBD Potency (liquids)</u>	<u>CBD Potency = (mg/ml CBDA × 0.877) + mg/ml CBD</u>		

J. Pesticide testing: A sample shall pass pesticide testing if concentrations of residues of pesticides are lower than the action levels listed in Table 5, *Pesticide Testing Requirements*, below.

(1) The division may adopt required testing for additional pesticide residues if quality control or inspection testing conducted by cannabis testing laboratories, NMDA, the department of health, or the division identifies their presence in a cannabis product produced or manufactured by any cannabis establishment. The division shall provide written notice to licensees 30 days before implementing required testing for additional pesticide residues.

(2) Nothing in this section shall be interpreted to waive or diminish any requirement of the Pesticide Control Act, Sections 76-4-1 et seq. NMSA 1978. The division, alone or in conjunction with NMDA, may investigate any suspected use of a pesticide not registered with NMDA for use on cannabis.

(3) This Subsection J of 16.8.7.8 NMAC is effective July 12, 2022.

Table 5. Pesticide Testing Requirements

<u>Targeted Pesticide</u>	<u>CAS Number</u>	<u>Action Level: Inhalable*</u>	<u>Action Level: Non-Inhalable*</u>
<u>†Abamectin</u>	<u>71751-41-2</u>	<u>0.1</u>	<u>0.15</u>
<u>†Acequinocyl</u>	<u>57960-19-7</u>	<u>2.0</u>	<u>2.0</u>
<u>†Bifenazate</u>	<u>149877-41-8</u>	<u>0.2</u>	<u>0.2</u>
<u>†Bifenthrin</u>	<u>82657-04-3</u>	<u>0.1</u>	<u>0.1</u>
<u>†Etoxazole</u>	<u>153233-91-1</u>	<u>0.1</u>	<u>1.0</u>
<u>†Imazalil</u>	<u>35554-44-0</u>	<u>0.1</u>	<u>0.1</u>
<u>†Imidacloprid</u>	<u>138261-41-3</u>	<u>0.1</u>	<u>3.0</u>
<u>†Myclobutanil</u>	<u>88671-89-0</u>	<u>0.1</u>	<u>0.4</u>
<u>†Paclobutrazol</u>	<u>76738-62-0</u>	<u>0.04</u>	<u>0.04</u>
<u>Piperonyl butoxide</u>	<u>51-03-6</u>	<u>3.0</u>	<u>8.0</u>
<u>†Pyrethrins</u> <u>(cumulative total)</u>	<u>121-21-1</u> <u>25402-06-6</u> <u>4466-14-2</u>	<u>0.5</u>	<u>1.0</u>
<u>†Spinosyn A, D</u> <u>(cumulative total)</u>	<u>131929-60-7</u> <u>131929-63-0</u>	<u>0.1</u>	<u>3.0</u>
<u>†Spiromesifen</u>	<u>283594-90-1</u>	<u>0.1</u>	<u>0.2</u>
<u>†Spirotetramat</u>	<u>203313-25-1</u>	<u>0.1</u>	<u>0.2</u>
<u>†Trifloxystrobin</u>	<u>141517-21-7</u>	<u>0.02</u>	<u>0.02</u>
<u>Other pesticide not registered with NMDA for use on cannabis</u>	<u>Varies</u>	<u>0.02</u>	<u>0.02</u>

*Micrograms of pesticide per gram (µg/g) of sample/parts per million (ppm).
Report levels less than the Limit of Quantitation for each pesticide residue according to the following example:
"Paclobitrazol < 0.4 µg/g"
†Not registered with NMDA for use on cannabis.

K. Release of batch after testing: A cannabis establishment may release an entire batch of cannabis product for immediate manufacture, sale, or other use, provided that the sample taken from the batch passes the tests required in this section.

L. Procedures for testing: A cannabis establishment shall adhere to the following procedures:

(1) After collection of samples, a batch of cannabis product shall be segregated in a secure container and stored under controlled environmental conditions (temperature, humidity, light) designed to limit microbial growth or other spoilage until the cannabis establishment receives a certificate of analysis indicating the batch meets the testing requirements of this rule.

(2) The secured container shall be labeled with the identification number used in the track and trace system, the name of the cannabis testing laboratory, the date on which the samples were taken, and, in minimum 12-point font, all capital letters, "AWAITING TEST RESULTS. DO NOT TRANSFER."

(3) The cannabis testing laboratory and the cannabis establishment submitting samples each shall appropriately document in the track and trace system the sampling and testing of cannabis product.

(4) A cannabis establishment shall maintain all results of laboratory tests conducted on cannabis products produced or manufactured by the cannabis establishment for a period of at least two years and shall make those results available to consumers or cannabis retailers upon request.

M. Re-testing: If a sample fails any test, the cannabis establishment may request re-testing by the same cannabis testing laboratory or another cannabis testing laboratory. If the repeated test is within acceptable limits, then the batch may be sold, transferred, or further manufactured.

N. Remediation: Within 120 days of a failed test, a cannabis establishment may remediate and retest the batch according to the procedures described in this subsection. A cannabis establishment shall adopt and maintain on the premises protocols regarding remediation consistent with this rule.

(1) A cannabis establishment may remediate dried cannabis or cannabis concentrates that fail microbiological testing by means of extraction using an approved volatile solvent. Other products that fail

microbiological testing may not be remediated.

(2) A cannabis establishment may remediate any cannabis product that fails homogeneity testing through any approved manufacturing process, including extraction, chopping, melting, mixing, infusing, or otherwise combining the batch.

(3) A cannabis establishment may remediate any cannabis product that fails residual solvent testing by evaporating solvent using heat, vacuum pressure, or a combination of methods.

(4) A cannabis establishment may remediate cannabis that fails visual inspection for the presence of mold by means of extraction using an approved volatile solvent.

(5) A cannabis establishment may remediate cannabis that fails visual inspection for the presence of insects, hair, eggs, or feces by removing the contaminants, followed by extraction using an approved volatile solvent.

(6) A cannabis establishment may remediate cannabis that fails visual inspection for the presence of soil or rocks by removing the contaminants.

(7) Cannabis product that has been remediated must undergo any test that was previously failed.

(8) Cannabis product that has been remediated with the use of volatile solvents must additionally undergo residual solvent testing.

O. Notice and destruction: Any cannabis product that fails a test and cannot be remediated, including any remediated cannabis product that fails any test after remediation, is subject to destruction in accordance with the wastage requirements of 16.8.2.15 NMAC. The cannabis establishment shall notify the division within 24 hours and shall confirm the wastage and disposal of the usable cannabis in accordance with this rule. The wasted product shall be removed from inventory, and the removal from

inventory shall be noted in the track and trace system.

P. Interpretation of differing results: Results produced by a cannabis testing laboratory are valid only for the sample tested. A differing result produced by quality control or inspection testing of a different sample pursuant to 16.8.2.16 NMAC is not grounds for action against the cannabis testing laboratory that produced the original testing result.

[16.8.7.15 NMAC – N, 07/12/2022]

16.8.7.16 ADDITIONAL TESTING SERVICES OFFERED BY CANNABIS TESTING LABORATORIES:

A cannabis testing laboratory may offer cannabis establishments testing for quality improvement, research and development, or labeling purposes. A cannabis testing laboratory may also offer testing to persons other than cannabis establishments as provided in this section.

A. Research and development testing for cannabis establishments: A cannabis testing laboratory may offer to cannabis establishments any required test or any additional test for the purpose of research and development or for quality-control measures requested by a cannabis establishment.

(1) The cannabis establishment may collect the sample, or an agent of the cannabis testing laboratory may collect the sample.

(2) If a cannabis establishment requests testing for research and development purposes, the results may not be used to satisfy any required testing requirement, even if the sample passes all tests.

(3) The failure of a test for research and development purposes shall not constitute a failed test.

(4) The results of a test conducted for research and development purposes shall not be included on a product label or advertisement.

B. Testing for the

purposes of labeling by cannabis establishments: A cannabis testing laboratory may offer to cannabis establishments additional tests not included in required testing for the purposes of product labeling, including quantitation of specific pesticides, microbial contaminants, solvents, mycotoxins, or metals.

(1) An agent of the cannabis testing laboratory shall collect the samples according to the laboratory's protocols.

(2) A label may include a reference to concentrations of compounds not subject to required testing, including terpenes, terpenoids, or additional cannabinoids.

(3) A label may include a reference to the passage of cannabis screenings, including one or more of the following:

(a) naming the contaminants for which screening was performed;

(b) providing a link or QR code to the list of contaminants for which the cannabis product was screened; or

(c) a statement that the product has met third-party screening criteria, such as those established by an industry association, except that no label shall contain claims that a cannabis product is "pesticide free" or "organic" unless such labeling is specifically authorized under U.S. department of agriculture regulations.

C. Reporting of contamination: Nothing in this rule shall be interpreted to require a cannabis testing laboratory to offer testing for analytes not included in required testing. However, a cannabis testing facility shall report to the division, without naming the source of the sample, the detection of any of the following analytes in the course of testing for research and development or labeling purposes:

(1) aflatoxin B1, B2, G1, and G2 and ochratoxin A, at a total concentration of 20 µg/kg (parts per billion) or greater;

(2) arsenic, cadmium, lead, or mercury, at a

concentration of 0.4 µg/g (parts per million) or greater;

(3) the residue of any pesticide not required to be tested or not registered in New Mexico for use on cannabis, at any level detectable by the cannabis testing laboratory's methodology; or

(4) any microorganism not required to be tested at a level that poses a significant threat to human health.

D. Research and development testing in connection with personal use or medical use of Cannabis. A cannabis testing laboratory may perform any test on a sample of cannabis product for any resident of New Mexico who is at least 21 years of age and represents in writing that the cannabis product is for the personal use or medical use of the person submitting the sample or a person for whom the person submitting the sample is acting as a primary caregiver. The cannabis testing laboratory shall provide guidance on sample collection but shall not collect samples onsite.

E. Testing services to entities operated or licensed by a tribal government. A cannabis testing laboratory may perform any test on a sample of cannabis product for any entity located within New Mexico and operated or licensed by a tribal government with which the division has an intergovernmental agreement covering cannabis testing. If the intergovernmental agreement permits such entities to collect and submit samples, the cannabis testing laboratory shall provide guidance on sample collection. Otherwise, an agent of the laboratory shall collect samples.

F. Testing services for the division or other governmental entities: A cannabis testing laboratory may, but is not required to, perform any test on behalf of the division, NMDA, another state agency, or a state or local law enforcement authority acting within its lawful jurisdiction.

[16.8.7.16 NMAC – N, 07/12/2022]

16.8.7.17 PREVENTION OF HEAVY METAL CONTAMINATION: A cannabis establishment shall adhere to the following quality control standards for the production and manufacturing of cannabis:

A. Growing media: The cannabis establishment shall maintain, and make available for division inspection, records of all growing media purchased.

B. Water: If using for irrigation water from a non-municipal source, a cannabis establishment shall maintain quarterly testing data indicating concentrations at or below the action levels in Table 1, *Heavy Metal Testing Requirements for Water and Soil*, below.

C. Soil: If growing cannabis directly in the ground, the cannabis establishment shall submit at least annually representative soil samples to a laboratory for analysis of arsenic, cadmium, lead, and mercury levels and shall retain a certificate of analysis for inspection by the division. If the concentration of any heavy metal exceeds the action levels in Table 1, *Heavy Metal Testing Requirements for Water and Soil*, below, the cannabis establishment shall remediate the soil and shall not produce additional plants until soil concentrations are below the applicable action levels.

D. Choice of laboratories: The cannabis establishment may submit water or soil samples to any laboratory in the United States offering water or soil analysis for the four required analytes.

Table 1. Heavy Metal Testing Requirements for Water and Soil

<u>Analyte</u>	<u>Symbol</u>	<u>CAS Number</u>	<u>Action Level: Soil*</u>	<u>Action Level: Water†</u>
<u>Arsenic</u>	As	7440-38-2	4.25	10.0
<u>Cadmium</u>	Cd	7440-43-9	7.05	5.0
<u>Lead</u>	Pb	7439-92-1	400	15.0
<u>Mercury</u>	Hg	7439-97-6	2.38	2.0

*Reported in micrograms per gram (µg/g) of sample/parts per million (ppm). Based on New Mexico Environment Department's *Risk Assessment Guidance for Site Investigations and Remediation*.

†Reported in micrograms per liter (µg/L) of sample. Based on U.S. Environmental Protection Agency's maximum contaminant levels.

[16.8.7.17 NMAC – N, 07/12/2022]

~~[16.8.7.11]~~ **16.8.7.18 SEVERABILITY:** If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.

[16.8.7.18 NMAC – N, 3/1/2022; Rn, 16.8.7.11 NMAC, 07/12/2022]

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Other Material Related to Administrative Law

REGULATION AND LICENSING DEPARTMENT CANNABIS CONTROL DIVISION

NOTICE OF MINOR, NONSUBSTANTIVE CORRECTION

The Cannabis Control Division, Regulation and Licensing Department, gives Notice of a Minor, Nonsubstantive Correction to 16.8.7 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

Section 15: In Subsection J, paragraph (2), the citation for “Sections” have replaced the symbols “§§” to conform to correct legislative style. In same subsection, paragraph (3), the effective date was corrected to July 12, 2022 from July 1, 2022 to correct the errata date.

A copy of this Notification will be filed with the official version of each of the above rules.

WORKFORCE SOLUTIONS, DEPARTMENT OF

NOTICE OF MINOR, NONSUBSTANTIVE CORRECTION

The New Mexico Department of Workforce Solutions, gives Notice of a Minor, Nonsubstantive Correction to 11.1.6 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D

of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

Section 15: The section title was erroneously titled “Disclosure of Complaints”. The correct title for that section should be “Closure of Complaints”. The Section title has been corrected.

A copy of this Notification will be filed with the official version of each of the above rules.

End of Other Material Related to Administrative Law

2022 New Mexico Register

Submittal Deadlines and Publication Dates

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Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 11
Issue 2	January 13	January 25
Issue 3	January 27	February 8
Issue 4	February 10	February 22
Issue 5	February 24	March 8
Issue 6	March 10	March 22
Issue 7	March 24	April 5
Issue 8	April 7	April 19
Issue 9	April 21	May 3
Issue 10	May 5	May 24
Issue 11	May 26	June 7
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Issue 13	July 1	July 12
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Issue 20	October 13	October 25
Issue 21	October 27	November 8
Issue 22	November 17	November 29
Issue 23	December 1	December 13
Issue 24	December 15	December 27

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

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