

TITLE 11 LABOR AND WORKERS COMPENSATION
CHAPTER 2 JOB TRAINING
PART 3 STATE APPRENTICESHIP POLICY MANUAL

11.2.3.1 ISSUING AGENCY: New Mexico Department of Workforce Solutions, as the State Apprenticeship Agency.
[11.2.3.1 NMAC - Rp, 11.2.3.1 NMAC, 1/30/2018]

11.2.3.2 SCOPE: All apprenticeship programs, sponsors, and apprentices registered with the New Mexico department of workforce solutions.
[11.2.3.2 NMAC - Rp, 11.2.3.2 NMAC, 1/30/2018]

11.2.3.3 STATUTORY AUTHORITY: Section 50-7-1 to 50-7-4.1, 50-7-7 NMSA 1978
[11.2.3.3 NMAC - Rp, 11.2.3.3 NMAC, 1/30/2018]

11.2.3.4 DURATION: Permanent.
[11.2.3.4 NMAC - Rp, 11.2.3.4 NMAC, 1/30/2018]

11.2.3.5 EFFECTIVE DATE: January 30, 2018 unless a later date is cited at the end of a section.
[11.2.3.5 NMAC - Rp, 11.2.3.5 NMAC, 1/30/2018]

11.2.3.6 NEW MEXICO STATE APPRENTICESHIP OBJECTIVES:

A. The department of workforce solutions (“the department”) is the state apprenticeship agency (SAA). By delegation, the apprenticeship director is the department’s operating head and administrator for all apprenticeship related functions and activities.

B. General: To help achieve, through cooperative effort, the training of apprentices in apprenticeable occupations to meet current and future needs for skilled journeyworkers. To help insure that this training stays abreast of technological developments and needs for national security, and to increase the job opportunities, earning ability, and security of the apprentices. In order to provide equal opportunities for all qualified applicants for apprenticeship, hereafter all apprentices shall be selected in accordance with a plan which assures equality of opportunity and which is acceptable to the state apprenticeship council and approved by the department of workforce solutions.

C. Specific:

(1) to develop and improve techniques which will more accurately measure future apprenticeship requirements on a national, industrial, and community basis;

(2) to promote more widespread use of effective techniques which will assist in the selection and employment of apprentices;

(3) to make available to potential users, information relating to prospective apprenticeship requirements, occupational outlook, counseling techniques, and procedures which will aid:

(a) educational institutions in planning curricula;

(b) management and labor in planning apprenticeship programs;

(c) parents, teachers, and counselors in advising youth; and

(d) individuals in their occupational planning.

(4) to encourage communities to survey their apprenticeship needs in order to have a sound basis for providing adequate educational facilities, vocational guidance, selective placement services, and to assist in the development of sound educational and training opportunities for all individuals;

(5) to encourage those responsible for apprenticeship development in all industries to determine their future apprenticeship requirements in order to have a sound basis for action;

(6) To promote effective apprenticeship training by:

(a) studying the quantity and quality of apprenticeship training in industry;

(b) organizing and promoting research on effective apprenticeship training

practices;

(c) encouraging the use of methods which have proven to be effective in apprenticeship training;

(d) developing and promoting services to assist management and labor in determining apprenticeship training needs; and

(e) developing, organizing, and offering technical assistance to apprenticeship training programs.

(7) to assist other agencies to develop and provide services for apprenticeship programs which are flexible and acceptable to labor and management; and

(8) to stimulate national, state, and local organizations and groups to give active support to effective apprenticeship training programs so that a greater proportion of journeyworkers in apprenticeable occupations will have achieved their skill through apprenticeship programs.

[11.2.3.6 NMAC - Rp, 11.2.3.6 NMAC, 1/30/2018]

11.2.3.7 DEFINITIONS:

A. “Administrator” means the administrator of the office of apprenticeship (OA), or any person specifically designated by the administrator.

B. “Apprentice” means a worker at least 16 years of age, except where a higher minimum age standard is otherwise fixed by law, who is employed to learn an apprenticeable occupation as provided in 11.2.3.22 NMAC under standards of apprenticeship fulfilling the requirements of 11.2.3.23 NMAC.

C. “Apprenticeship agreement” means a written agreement, complying with 11.2.3.27 NMAC, between an apprentice and either the apprentice’s program sponsor, or an apprenticeship committee acting as agent for the program sponsor(s), which contains the terms and conditions of the employment and training of the apprentice.

D. “Apprenticeship committee (committee)” means those persons designated by the sponsor to administer the program. A committee may be either joint or non-joint, as follows:

(1) A joint committee is composed of an equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent(s);

(2) A non-joint committee, which may also be known as a unilateral or group non-joint (which may include employees) committee, has employer representatives but does not have a bona fide collective bargaining agent as a participant.

E. “Apprenticeship program” means a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, as required under 11.2.2 NMAC and 11.2.3 NMAC, including such matters as the requirement for a written apprenticeship agreement.

F. “Apprenticeship program completion approaches” means the different ways that the term of apprenticeship for completion of a program can be measured. They are defined as follows.

(1) Time based approach is measured by the skill acquisition through the individual apprentice’s completion of at least 2,000 hours of on-the-job training as described in a work process schedule.

(2) Competency based approach is measured by the attainment of manual, mechanical or technical skills and knowledge, as specified by an occupational standard and demonstrated by an appropriate written and hands-on proficiency measurement.

(3) Hybrid approach is measured by the individual apprentice’s skill acquisition through a combination of a specified minimum number of hours of on-the-job training and the successful demonstration of competency as described in a work process schedule.

G. “Apprenticeship standards” means a document with the requirements, as a minimum, as defined in 11.2.3.23 NMAC.

H. “Cancellation” means the termination of the registration or approval status of a program at the request of the sponsor, or termination of an apprenticeship agreement at the request of the apprentice.

I. “Certification or certificate” means documentary evidence that:

(1) the OA has approved a set of national guidelines for apprenticeship standards developed by a national committee or organization, joint or unilateral, for policy or guideline use by local affiliates;

(2) the department has established that an individual is eligible for probationary employment as an apprentice under a registered apprenticeship program;

(3) the department has registered an apprenticeship program as evidenced by a certificate of registration or other written indicia;

(4) the department has determined that an apprentice has successfully met the requirements to receive an interim credential; or

(5) the department has determined that an individual has successfully completed apprenticeship.

J. “Competency” means the attainment of manual, mechanical or technical skills and knowledge, as specified by an occupational standard and demonstrated by an appropriate written and hands-on proficiency measurement.

K. “Completion rate” means the percentage of an apprenticeship cohort who receives a certificate of apprenticeship completion within one year of the projected completion date. An apprenticeship cohort is the group of individual apprentices registered to a specific program during a one-year time frame, except that a cohort does not include the apprentices whose apprenticeship agreement has been cancelled during the probationary period.

L. “Director” means the apprenticeship director at the department of workforce solutions.

M. “Electronic media” means media that utilize electronics or electromechanical energy for the end user (audience) to access the content; and includes, but is not limited to, electronic storage media, transmission media, the internet, extranet, lease lines, dial-up lines, private networks, and the physical movement of removable or transportable electronic media or interactive distance learning.

N. “Employer” means any person or organization employing an apprentice whether or not such person or organization is a party to an apprenticeship agreement with the apprentice.

O. “Equal employment opportunity (EEO) compliance review” means a comprehensive review conducted by the department in regards to the EEO aspects of a registered apprenticeship program in accordance with those activities defined in the 11.2.2 NMAC equal employment opportunity in apprenticeship state plan.

P. “Federal purposes” includes any federal contract, grant, agreement or arrangement dealing with apprenticeship; and any federal financial or other assistance, benefit, privilege, contribution, allowance, exemption, preference or right pertaining to apprenticeship.

Q. “Interim credential” means a credential issued by the department, upon request of the appropriate sponsor, as certification of competency attainment by an apprentice.

R. “Journeyworker” means a worker who has attained a level of skill, abilities, and competencies recognized within an industry as having mastered the skills and competencies required for the occupation. (Use of the term may also refer to a mentor, technician, specialist or other skilled worker who has documented sufficient skills and knowledge of an occupation, either through formal apprenticeship or through practical on-the-job experience and formal training).

S. “Office of apprenticeship (OA)” means the office designated by the employment and training administration, United States department of labor, to administer the national apprenticeship system or its successor organization.

T. “Provisional registration” means the one-year initial provisional approval of newly registered programs that meet the required standards for program registration, after which program approval may be made permanent, continued as provisional, or rescinded following a review by the department and the state apprenticeship council, as provided for in the criteria described in Subsection B of 11.2.3.20 NMAC.

U. “Quality assurance assessment” means a comprehensive review conducted by the department regarding all aspects of an apprenticeship program’s performance, including but not limited to, determining if apprentices are receiving: on-the-job learning in all phases of the apprenticeable occupation; scheduled wage increases consistent with the registered standards; related instruction through appropriate curriculum and delivery systems; and that the department is receiving notification of all new registrations, cancellations, and completions as required in this part.

V. “Registration agency” means the office of apprenticeship or a recognized state apprenticeship agency that has responsibility for registering apprenticeship programs and apprentices; providing technical assistance; conducting reviews for compliance with 29 CFR parts 29 and 30 and quality assurance assessments. The registration agency for the state of New Mexico is the department of workforce solutions.

W. “Registration of an apprenticeship agreement” means the acceptance and recording of an apprenticeship agreement by the department as evidence of the apprentice’s participation in a particular registered apprenticeship program.

X. “Registration of an apprenticeship program” means the acceptance and recording of such program by the office of apprenticeship, or registration or approval by a recognized state apprenticeship agency, as meeting the basic standards and requirements of the United States department of labor, OA, for approval of such program for federal purposes. Approval is evidenced by a certificate of registration or other written indicia.

Y. “Related instruction” means an organized and systematic form of instruction designed to provide the apprentice with the knowledge of the theoretical and technical subjects related to the apprentice’s occupation.

Such instruction may be given in a classroom, through occupational or industrial courses, or by correspondence courses of equivalent value, electronic media, or other forms of self-study approved by the department.

Z. “Sponsor” means any person, association, committee, or organization operating an apprenticeship program and in whose name the program is (or is to be) registered or approved.

AA. “State apprenticeship agency (SAA)” means an agency of a state government that has responsibility and accountability for apprenticeship within the state. The SAA for New Mexico is the New Mexico department of workforce solutions, herein after referred to as “the department”.

BB. “State apprenticeship council (SAC)” means the entity established to assist the department.

CC. “Technical assistance” means guidance provided by department staff in the development, revision, amendment, or processing of a potential or current sponsor’s standards of apprenticeship, apprenticeship agreements, or advice or consultation with a sponsor to further comply with this part or guidance from the OA to the department on how to remedy nonconformity with this part.

DD. “Transfer” means a shift of apprenticeship registration from one program to another or from one employer within a program to another employer within that same program, where there is agreement between the apprentice and the affected apprenticeship committees or program sponsors.

[11.2.3.7 NMAC - Rp, 11.2.3.7 NMAC, 1/30/2018]

11.2.3.8 DUTIES OF THE DEPARTMENT OF WORKFORCE SOLUTIONS:

A. Only the department may seek recognition by the OA as an agency which has been properly constituted under an acceptable law or executive order, and authorized by the OA to register and oversee apprenticeship programs and agreements for federal purposes.

B. The department shall:

- (1) have authority to give final approval in all areas pertaining to the registration of apprenticeship programs and program standards;
- (2) maintain a register and appropriate records of all apprentices and apprenticeship programs that have approval of the department;
- (3) review the activities of apprenticeship programs;
- (4) approve and keep record of registered apprentices and apprenticeship agreements;
- (5) monitor apprenticeship programs, performance standards, and conduct quality assurance assessments and EEO compliance reviews;
- (6) apply for recognition as a registration agency with the OA and maintain national requirements as determined in 29 CFR 29.13 for recognition as a registration agency; the department is subject to derecognition by the OA for failure to fulfill or operate in conformity with the requirements of CFR parts 29 and 30;
- (7) serve as the registration agency for apprenticeship programs and apprentices;
- (8) issue interim credentials to apprentices;
- (9) issue certificates of completion to apprentices;
- (10) coordinate linkages with the New Mexico workforce investment system;
- (11) issue certifications;
- (12) issue certificates of registration;
- (13) be the highest authority within the division where complaint appeals can be sent.

[11.2.3.8 NMAC - Rp, 11.2.3.8 NMAC, 1/30/2018]

11.2.3.9 DUTIES OF THE DIRECTOR:

A. The director oversees the registration of apprenticeship programs, apprentices, and all activities associated with the department.

B. The director shall:

- (1) encourage apprenticeship training through personal contact with individual employers and labor organizations;
- (2) act as liaison and shall coordinate, and cooperate with other state and federal agencies;
- (3) assist in the preparation of standards of apprenticeship for presentation to the SAC;
- (4) protect the welfare of the apprentices;
- (5) devise procedures and keep records and statistics;
- (6) handle public relations pertaining to apprenticeship training for the purpose of public education;
- (7) carry out the policies approved and assigned by the department;

- (8) notify all apprenticeship program sponsors of new or changed policy adopted by the SAA; and
- (9) coordinate the activities and objectives of the department and SAC with OA staff assigned to New Mexico.
- [11.2.3.9 NMAC - Rp, 11.2.3.9 NMAC, 1/30/2018]

11.2.3.10 ORGANIZATION OF SAC: The SAC provides advice and guidance to the department on the operation of the state's apprenticeship system.

A. The SAC shall consist of three persons known to represent employers, three persons known to represent labor organizations, and three public representatives. Persons appointed to the council shall be familiar with apprenticeable occupations.

B. SAC members shall be appointed as provided for in Section 50-7-3 NMSA 1978. If a SAC member misses two consecutive meetings, unless for just cause beyond the member's control, the SAC shall recommend to the department that such member be replaced by a person who represents the same interest group.

C. Officers of the SAC shall consist of a chairman and a vice-chairman. These officers will be elected annually at the third quarter regular meeting, and shall assume office immediately upon election. The chairman and vice-chairman shall not be selected from the same interest group, and shall not be eligible to succeed themselves. A former chairman or vice-chairman may be elected to the same office after having been out of that office for one year.

D. The director shall serve as executive secretary and as an ex-officio, non-voting member of the SAC and as an ex-officio non-voting member of any committees created pursuant to Subsection E of 11.2.3.10 NMAC.

E. Committees may be appointed by the SAC chairman to study, research, and make recommendations to the SAC on such matters as may be deemed to be appropriate by the SAC. Membership of such committees may be composed of SAC members, other interested persons, or a combination of SAC members and non-members.

[11.2.3.10 NMAC - Rp, 11.2.3.10 NMAC, 1/30/2018]

11.2.3.11 DUTIES OF SAC: The SAC shall:

A. work to effectively encourage the development of, and assist in the establishment of, voluntary apprenticeship training opportunities for eligible persons;

B. review all applications for the registration of an apprenticeship program, revisions to an existing apprenticeship program, and other aspects of apprenticeship and provide a final recommendation to the department for final action on any such application; and

C. work in cooperation with the department to review the activities of all registered apprenticeship programs and all registered apprentices.

[11.2.3.11 NMAC - Rp, 11.2.3.11 NMAC, 1/30/2018]

11.2.3.12 MEETINGS OF SAC:

A. Regular meetings shall be held quarterly on the third Thursday of the second month of each quarter, unless otherwise rescheduled within each quarter by the chairman.

B. Meetings may be scheduled in any city, town, or village of the state.

C. During a regular meeting at least once each year, the SAC shall adopt an annual resolution stating its procedure for giving reasonable public notice of regular and special meetings pursuant to the requirements of the state Open Meetings Act.

D. Meetings may be requested by the chairman, or in the chairman's absence, by the vice-chairman, or on petition by any three members of the SAC. The department may also request a meeting.

E. Five members of the SAC shall constitute a quorum, provided at least one member representing employers and one member representing labor, and one public member are present.

F. Voting shall be limited to the members present at the SAC meeting. The chairman may vote on all questions and issues, or may choose to vote only in the case of a tie.

G. All meetings shall be open to all interested parties and to the public, except that meetings may be closed to the public as provided for in the state Open Meetings Act.

[11.2.3.12 NMAC - Rp, 11.2.3.12 NMAC, 1/30/2018]

11.2.3.13 PARLIAMENTARY PROCEDURE AND ORDER OF BUSINESS:

A. Roberts Rules of Order, revised, shall govern the proceedings of the SAC, unless otherwise specified in this manual.

B. The order of business for all meetings of the SAC and its committees shall be:

- (1) approval of minutes for previous meeting;
- (2) communications;
- (3) reports of:
 - (a) SAC members;
 - (b) committees;
 - (c) consultants;
 - (d) director of apprenticeship;
- (4) unfinished business;
- (5) new business;
- (6) persons wishing to be heard by the SAC;
- (7) election of officers;
- (8) adjourn.

[11.2.3.13 NMAC - Rp, 11.2.3.13 NMAC, 1/30/2018]

11.2.3.14 FORMULATION OF POLICY: The SAC advises on general policies, principles, and standards under which the department operates. The department interprets, and enforces these policies, principles and standards. SAC advises the areas of emphasis to be placed on apprenticeship activities; represents the point of view of employers and labor and the public in respect to major state problems in apprenticeship; serves as a liaison with employers and labor, and in this capacity helps to promote apprenticeship by participation in conferences and meetings.

[11.2.3.14 NMAC - Rp, 11.2.3.214 NMAC, 1/30/2018]

11.2.3.15 U.S. DEPARTMENT OF LABOR, OFFICE OF APPRENTICESHIP: General policy: It shall be the responsibility of the director to coordinate the activities and objectives of the department with staff of the OA assigned to New Mexico. Mutual understanding and good faith on part of the state and federal agencies is essential to the advancement of parallel interest of the state and federal governments.

[11.2.3.15 NMAC - Rp, 11.2.3.15 NMAC, 1/30/2018]

11.2.3.16 NATIONAL STANDARDS AND POLICY STATEMENTS OF APPRENTICESHIP:

General policy: It is basic department policy to cooperate in promoting the development of joint national standards of apprenticeship agreed upon by the appropriate national organizations concerned. When national standards for various reasons cannot be obtained, national policy statements by employer or employee organizations which observe the fundamentals of apprenticeship are recognized as guides by the SAA in the promotion of apprenticeship among the members of the organizations which formulate the policy.

[11.2.3.16 NMAC - Rp, 11.2.3.16 NMAC, 1/30/2018]

11.2.3.17 APPRENTICESHIP PROGRAMS: The terms and conditions of an apprenticeship program must be in written form so that all parties concerned may be informed of its provisions, and so it can be used in the training operations and the administration of the program. Apprenticeship programs are defined by the department based upon guidance from the United States department of labor, OA.

[11.2.3.17 NMAC - Rp, 11.2.3.17 NMAC, 1/30/2018]

11.2.3.18 RELATIONSHIP TO BARGAINING AGREEMENTS:

A. General policy: Because a bargaining agreement is a legal contract between the parties who sign it, its terms and conditions with respect to the employment and training of apprentices are to be fully respected. Any changes from the terms in the bargaining agreement advocated in connection with apprenticeship must be made in conformance with the recognized procedures for amending the bargaining agreement.

B. Apprenticeship provisions in bargaining agreements: It is preferable that apprenticeship programs be developed separately from the bargaining agreement to focus greater attention to apprenticeship. Where the parties to the agreement so desire, it is recommended that a clause be inserted in the agreement authorizing the establishment of an apprenticeship program, (or recognizing a program in existence), to conform to the fundamentals or standards of the department.

C. To be eligible for registration: Under a program proposed for registration by an employer or employers' association, where the standards, collective bargaining agreement or other instrument provides for participation by a union in any manner in the operation of the substantive matters of the apprenticeship program, and such participation is exercised, written acknowledgement of union agreement or no objection to the registration is required. Where no such participation is evidenced and practiced, the employer or employers' association must simultaneously furnish to an existing union, which is the collective bargaining agent of the employees to be trained, a copy of its application for registration and of the apprenticeship program. The department must provide for receipt of union comments, if any, within 45 days before final action on the application for registration and approval. [11.2.3.18 NMAC - Rp, 11.2.3.18 NMAC, 1/30/2018]

11.2.3.19 EMPLOYEE-EMPLOYER COOPERATION: General policy: Cooperation between an employer and his skilled employees is essential for the proper training of the apprentice. The employer provides employment for the apprentices. The skilled employees impart their skills and knowledge to the apprentice. [11.2.3.19 NMAC - Rp, 11.2.3.19 NMAC, 1/30/2018]

11.2.3.20 METHOD OF RECOGNITION:

A. General policy: Recognition is a means of publicly acknowledging apprenticeship programs that are considered to have met the fundamentals of apprenticeship. Recognition may be accorded to New Mexico apprenticeship programs by the department, by registration, when they have met the fundamentals of apprenticeship, and as detailed below. The director of apprenticeship shall notify programs of registration or denial, with the stated reason of denial within five working days of said action.

B. Eligibility and procedure for registration of an apprenticeship program:

(1) Eligibility for registration of an apprenticeship program is conditioned upon a program's conformity with the apprenticeship program standards published in this part. For a program to be determined by the department as being in conformity with these published standards, the program must apply for registration and be registered with the department. The determination that the program meets the apprenticeship program standards is effectuated only through such registration.

(2) Only an apprenticeship program or agreement that meets the following criteria is eligible for department registration:

(a) it is in conformity with the requirements of this part and the training is in an apprenticeable occupation having the characteristics set forth in 11.2.3.22 NMAC and

(b) it is in conformity with the requirements of the equal employment opportunity in apprenticeship state plan, 11.2.2 NMAC.

(3) Except as provided under Paragraph (4) of this subsection, apprentices must be individually registered under a registered program. Such individual registration may be accomplished by filing copies of each individual apprenticeship agreement with the department:

(a) by filing copies of each individual apprenticeship agreement with the department or;

(b) subject to prior department approval, by filing a master copy of such agreement followed by a listing of the name, and other required data, of each individual when apprenticed.

(4) The names of persons in probationary employment as an apprentice under an apprenticeship program registered by the department, if not individually registered under such program, must be submitted within 45 days of employment to the department for certification to establish the apprentice as eligible for such probationary employment.

(5) The department must be notified within 45 days of all individuals who have successfully completed apprenticeship programs. The department must also be notified and provided a statement of the reasons within 45 days of all apprentice actions; i.e., registrations, holds, advancements, cancellations, completions, or transfers.

(6) Operating apprenticeship programs when approved by the department are accorded registration by a certificate of registration or other written indicia.

(7) Applications for new programs that the department determines meet the required standards for program registration shall be given provisional approval for a period of one year. The department must review all new programs for quality and for conformity with the requirements of this part at the end of the first year after registration and make a determination that:

(a) a program that conforms with the requirements of this part shall be made permanent or shall continue to be provisionally approved through the first full training cycle;

(b) a program that is not in operation or does not conform to the regulations during the provisional approval period shall be recommended for deregistration procedures.

(8) The department shall review all programs for quality and for conformity with the requirements of 11.2.3 NMAC at the end of the first full training cycle. A satisfactory review of a provisionally approved program shall result in conversion of provisional approval to permanent registration. Subsequent reviews shall be conducted no less frequently than every five years. Programs that are not in operation or not conforming to the regulations shall be recommended for deregistration procedures.

(9) Any sponsor proposals or applications for modification(s) or change(s) to registered programs must be submitted to the department. The registration agency must make a determination on whether to approve such submissions within 90 days from the date of receipt. If approved, the modification(s) or change(s) will be recorded and acknowledged within 90 days of approval as an amendment to such program. If not approved, the sponsor shall be notified of the reasons for the disapproval and provided the appropriate technical assistance.

(10) Under a program proposed for registration by an employer or employers' association, where the standards, collective bargaining agreement or other instrument provides for participation by a union in any manner in the operation of the substantive matters of the apprenticeship program, and such participation is exercised, written acknowledgement of the union agreement or no objection to the registration is required. Where no such participation is evidenced and practiced, the employer or employers' association shall simultaneously furnish to an existing union, which is the collective bargaining agent of the employees to be trained, a copy of its application for registration and of the apprenticeship program. The department shall provide for receipt of union comments, if any, within 45 days before final action on the application for registration and approval.

(11) Where the employees to be trained have no collective bargaining agreement, an apprenticeship program may be proposed for registration by an employer or group of employers, or an employers' association.

C. Reciprocity of multi-state and out-of-state programs: The department will cooperate with the United States department of labor, OA, in the recognition of multi-state or out-of-state programs registered by OA. The department shall grant reciprocal approval for federal purposes to apprentices, apprenticeship programs, and standards that are registered in other states by the OA or another SAA if such reciprocity is requested by the apprenticeship program sponsor. Program sponsors seeking reciprocal approval must meet the wage and hour provisions and apprentice ratio standards of the reciprocal state.

[11.2.3.20 NMAC - Rp, 11.2.3.20 NMAC, 1/30/2018]

11.2.3.21 REVIEW OF PROGRAMS PERFORMANCE STANDARDS:

A. General policy: In order to carry out the provisions of the New Mexico State Apprenticeship Act with regard to safeguarding the welfare of the apprentice, the program provisions under which the apprentice is to be employed should be reviewed for their consistency with current apprenticeship fundamentals and recognized apprenticeship policies and practices of industry.

B. Every registered apprenticeship program shall have at least one registered apprentice, except for the following specified periods of time, which may not exceed one year:

(1) between the date when a program is registered and the date of registration for its first apprentice(s); or

(2) between the date that a program graduates an apprentice and the date of registration for the next apprentice(s) in the program.

C. The department shall evaluate performance of registered apprenticeship programs. The tools and factors to be used shall include, but are not limited to: quality assurance assessments, equal employment opportunity (EEO) compliance reviews, and completion rates. Any additional tools and factors used by the department in evaluating program performance must adhere to the goals and policies of the department.

D. In order to evaluate completion rates, the department shall review a program's completion rates in comparison to the national average for completion rates. Based on the review, the department shall provide technical assistance to programs with completion rates lower than the national average. Cancellation of apprenticeship agreements during the probationary period will not have an adverse impact on a sponsor's completion rate.

[11.2.3.21 NMAC - Rp, 11.2.3.21 NMAC, 1/30/2018]

11.2.3.22 CRITERIA FOR APPRENTICEABLE OCCUPATIONS: Criteria for apprenticeable occupations: An industry specific occupation, in order to be recognized as apprenticeable by the department, must possess all the following characteristics:

- A. it involves skills that are customarily learned in a practical way through a structured, systematic program of on-the-job supervised learning;
 - B. it is clearly identified and commonly recognized throughout an industry;
 - C. it involves the progressive attainment of manual, mechanical, or technical skills and knowledge which, in accordance with the industry standard for the occupation, would require the completion of a minimum of 2,000 hours of on-the-job learning; and
 - D. it requires of the completion of related instruction to supplement the on-the-job learning.
- [11.2.3.22 NMAC - Rp, 11.2.3.22 NMAC, 1/30/2018]

11.2.3.23 STANDARDS OF APPRENTICESHIP:

A. General policy: It is the objective of the department and the SAC to encourage the development and continuance of apprenticeship programs adequate to produce qualified skilled workers. Labor and employers will be encouraged to jointly develop adequate standards of apprenticeship, and it is the policy of the department and SAC to render any assistance needed by these groups in the development of such standards. Apprenticeship program sponsors shall submit their standards to the department for registration. After registration, the sponsor shall provide the director of apprenticeship with such documentation as may be requested concerning the operation of the program.

B. Development of standards: In order to promote good apprenticeship policies and procedures each apprenticeship program sponsor, who desires registration by the department, shall formulate, adopt, and submit to the department for review a set of apprenticeship standards. The purpose of these standards is to provide rules for the operation of the apprenticeship program. An apprenticeship program, to be eligible for registration by the department shall conform to the following standards:

(1) The program shall have an organized, written plan (program standards) embodying the terms and conditions of employment, related instruction, and supervision of one or more apprentices in the apprenticeable occupation, as defined in this part and subscribed to by a sponsor who has undertaken to carry out the apprentice training program.

(2) The program standards shall contain provisions that address:

- (a) the employment and training of the apprentice in a skilled occupation;
- (b) the term of apprenticeship, which for an individual apprentice may be measured

either through the completion of the industry standard for on-the-job learning (at least 2,000 hours) (time-based approach), the attainment of competency (competency-based approach), or a blend of the time-based and competency-based approaches (hybrid approach);

(i) the time-based approach measures skill acquisition through the individual apprentice's completion of at least 2,000 hours of on-the-job learning as described in a work process schedule;

(ii) the competency-based approach measures skill acquisition through the individual apprentice's successful demonstration of acquired skills and knowledge, as verified by the program sponsor; programs utilizing this approach shall still require apprentices to complete an on-the-job learning component of registered apprenticeship; the program standards shall address how on-the-job learning will be integrated into the program, describe competencies, and identify an appropriate means of testing and evaluation for such competencies;

(iii) the hybrid approach measures the individual apprentice's skill acquisition through a combination of specified minimum number of hours of on-the-job learning and the successful demonstration of competency as described in a work process schedule;

(c) the determination of the appropriate approach for the program standards is made by the program sponsor, subject to approval by the department of the determination as appropriate to the apprenticeable occupation for which the program standards are registered;

(d) an outline of the work processes in which the apprentice will receive supervised work experience and training on the job, and the allocation of the approximate amount of time to be spent in each major process;

(e) provisions or organized related and supplemental instruction in technical subjects related to the trade; a minimum of 144 hours for each year of apprenticeship is recommended. This instruction in technical subjects may be accomplished through media such as classroom, occupational or industry courses, electronic media, or other instruction approved by the department

(f) every apprenticeship instructor shall:

(i) meet the state department of education's requirements for a vocational-technical instructor in the state of registration, or be a subject matter expert, which is an individual, such as a journeyworker, who is recognized within an industry as having expertise in a specific occupation; and

(ii) have training in teaching techniques and adult learning styles, which may occur before or after the apprenticeship instructor has started to provide the related technical instruction;

(g) a progressively increasing schedule of wages to be paid to the apprentice consistent with the skill acquired; the entry wage shall not be less than the minimum wage prescribed by the Fair Labor Standards Act, where applicable, unless a higher wage is required by other applicable federal law, state law, respective regulations, or by collective bargaining agreement;

(h) periodic review and evaluation of the apprentice's performance on the job and in related instruction; and the maintenance of appropriate progress records;

(i) a numeric ratio of apprentices to journeyworkers consistent with established industry practices, proper supervision, training, safety, and continuity of employment, and applicable provisions in collective bargaining agreements except where such ratios are expressly prohibited by the collective bargaining agreements; the ratio language shall be specific and clearly described as to its application to the job site, workforce, department or plant;

(j) a probationary period reasonable in relation to the full apprenticeship term, with full credit given for such period toward completion of apprenticeship; the probationary period cannot exceed twenty-five percent of the length of the program, or one year, whichever is shorter;

(k) adequate and safe equipment and facilities for training and supervision, and safety training for apprentices on the job and in related instruction;

(l) the minimum qualifications required by a sponsor for persons entering the apprenticeship program, with an eligible starting age not less than 16 years;

(m) the placement of an apprentice under a written apprenticeship agreement that meets the requirements of 11.2.3.27 NMAC; the agreement shall directly, or by reference, incorporate the standards of the program as part of the agreement;

(n) the granting of advanced standing or credit for previously acquired experience, training or skills for all applicants equally with commensurate wages for any progression step so granted; all credit, which is to be granted, shall be reported to the office of the department in accordance with adopted procedures and guidelines;

(o) the transfer of an apprentice between apprenticeship programs and within an apprenticeship program shall be based on agreement between the apprentice and the affected apprenticeship committees or program sponsors, and shall comply with the following requirements:

(i) the transferring apprentice shall be provided a transcript of related instruction and on-the-job learning by the committee or program sponsor;

(ii) transfer shall be to the same occupation; and

(iii) a new apprenticeship agreement shall be executed when the transfer occurs between program sponsors;

(p) assurance of qualified training personnel and adequate supervision on the job;

(q) recognition for successful completion of apprenticeship evidenced by an appropriate certificate issued by the department;

(r) program standards that utilize the competency-based or hybrid approach for progression through an apprenticeship and that choose to issue interim credentials shall clearly identify the interim credentials, demonstrate how these credentials link to the components of the apprenticeable occupation, and establish the process for assessing an individual apprentice's demonstration of competency associated with the particular interim credential; further, interim credentials shall only be issued for recognized components of an apprenticeable occupation, thereby linking interim credentials specifically to the knowledge, skills, and abilities associated with those components of the apprenticeable occupation;

(s) identification of the department;

(t) provision for the registration, cancellation and deregistration of the program; and for the prompt submission of any program standard modification or amendment to the department for approval;

(u) provision for the registration of apprenticeship agreements, modifications, and amendments; notice to the SAA of persons who have successfully completed apprenticeship programs; and notice of transfers, suspensions, and cancellations of apprenticeship agreements and a statement of the reasons therefore;

- (v) authority for the cancellation of an apprenticeship agreement during the probationary period by either party without stated cause; cancellation during the probationary period will not have an adverse impact on the sponsor's completion rate;
 - (w) a statement that the program will be conducted, operated, and administered in conformity with applicable provisions of 11.2.2 NMAC equal opportunity in apprenticeship state plan;
 - (x) contact information (name, address, telephone number, and e-mail address if appropriate) for the appropriate individual with authority under the program to receive, process and make disposition of complaints;
 - (y) recording and maintenance of all records concerning apprenticeship as may be required by the OA or the department and other applicable law;
 - (z) all standards registered with the department shall contain a provision which states that the director or his or her designee shall be an ex-officio member, without vote, of any committee which functions to administer the apprenticeship program; and
 - (aa) provision which clearly states that the director or his or her designee shall have the right to visit all job sites where apprentices may be employed, and apprentice related instruction classes, in order to determine compliance with apprenticeship standards.
- [11.2.3.23 NMAC - Rp, 11.2.3.23 NMAC, 1/30/2018]

11.2.3.24 WORK PROCESSES:

- A.** General policy: An apprenticeship program should contain a sufficiently broad schedule of work processes for the acquirement of reasonable competency in the trade.
 - B.** Development of work processes: Work process schedules should be developed by those responsible for the training of apprentices and in sufficient detail to serve as an outline of the basic elements of the trade to be learned.
- [11.2.3.24 NMAC - Rp, 11.2.3.24 NMAC, 1/30/2018]

11.2.3.25 APPRENTICE WAGES:

- A.** General policy: Wages for apprentices should be calculated so that training, rather than production, is the principal criterion.
 - B.** Apprentice wages under bargaining agreement: Wage rates established for the apprentice under a bargaining agreement shall be recognized.
 - C.** Beginning apprentice rates: The beginning apprentice rates shall equal or exceed those customarily paid to other beginning apprentices in the trade in the locality.
 - D.** Expressing wage rates: Apprentice wage rates may be expressed in terms of cents per hour but preferably in percentages of the journeyworker's rate. The journeyworker's hourly rate as of the effective date of the program shall be reported when submitting programs for review and registration. Where the journeyworker's rate is shown as a weekly or monthly wage, the standard work week hours also shall be shown.
 - E.** Coverage under state and federal wage and hour acts: If sponsors of apprenticeship programs are uncertain as to their coverage under state and federal wage and hour acts and they propose to set up rate schedules under which the apprentice would be paid less than the minimum wages established by these acts, they should be advised to check with their attorney, or with the state or federal agency responsible for the administration of these acts.
- [11.2.3.25 NMAC - Rp, 11.2.3.25 NMAC, 1/30/2018]

11.2.3.26 CERTIFICATE OF COMPLETION OF APPRENTICESHIP:

- A.** General policy: It is the policy to emphasize the significance of the apprentice completion certificate issued by the department.
 - B.** Authentication of requests for completion certificates: A certificate of completion of apprenticeship will be issued to apprentices upon receipt of an electronic request from the appropriate program sponsor. The department shall have in its files some specific evidence that the program sponsor has requested a certificate for the apprentice.
- [11.2.3.26 NMAC - Rp, 11.2.3.26 NMAC, 1/30/2018]

11.2.3.27 APPRENTICE AGREEMENT: General policy: The terms and conditions of employment and training of each apprentice shall be stated in a written apprenticeship agreement. The agreement shall contain explicitly or by reference:

- A.** names and signatures of the contracting parties (apprentice, and the program sponsor or employer), and the signature of a parent or guardian if the apprentice is a minor;
 - B.** the date of birth and social security number of the apprentice;
 - C.** contact information of the program sponsor and the department;
 - D.** a statement of the occupation in which the apprentice is to be trained, and the beginning date and term (duration) of apprenticeship;
 - E.** a statement showing:
 - (1) the number of hours to be spent by the apprentice in work on the job in a time-based program; or a description of the skill sets to be attained by completion of a competency-based program, including the on-the-job learning component; or the minimum number of hours to be spent by the apprentice and a description of the skill sets to be attained by completion of hybrid program; and
 - (2) the number of hours to be spent in related instruction in technical subjects related to the occupation, which is recommended not be less than 144 hours per year;
 - F.** a statement setting forth a schedule of the work processes in the occupation or industry division in which the apprentice is to be trained and the approximate time to be spent at each process;
 - G.** a statement setting forth a schedule of the graduated scale of wages to be paid to the apprentice and whether or not the required related instruction is compensated;
 - H.** statements providing:
 - (1) for a specific period of probation during which the apprenticeship agreement may be cancelled by either party to the agreement upon written notice to the department, without adverse impact on the sponsor;
 - (2) that, after the probationary period, the agreement may be:
 - (a) cancelled at the request of the apprentice, or
 - (b) suspended or cancelled by the sponsor, for good cause, with due notice to the apprentice and a reasonable opportunity for corrective action, and with written notice to the apprentice and to the department of the final action taken;
 - I.** a reference incorporating as part of the agreement the standards of the apprenticeship program as they exist on the date of the agreement and as they exist on the date of the agreement and as they may be amended during the period of the agreement;
 - J.** a statement that the apprentice will be accorded equal opportunity in all phases of apprenticeship employment and training, without discrimination because of race, color, religion, national origin, or sex;
 - K.** contact information (name, address, phone, and email if appropriate) of the appropriate authority designated under the program to receive, process and make disposition of controversies or differences arising out of the apprenticeship agreement when the controversies or differences cannot be adjusted locally or resolved in accordance with the established procedure or applicable collective bargaining provisions.
- [11.2.3.27 NMAC - Rp, 11.2.3.27 NMAC, 1/30/2018]

11.2.3.28 PROGRAM COMPLIANCE AND DEREGISTRATION PROCEEDINGS:

- A.** Operation according to approved standards: After a program sponsor has registered the program's standards with the department, the program shall operate in accordance with these standards. Should an operating procedure be desired that is not in accordance with the existing approved standards, the program sponsor is required to submit a proposal pursuant to the procedures set forth in Subsection B of 11.2.3.23 NMAC.
- B.** Programs not in compliance with department policies: Should a program sponsor not comply with these policies and procedures, the SAA shall take appropriate action. Deregistration of the program shall be used after reasonable efforts to gain compliance have failed.
- C.** Deregistration of an apprenticeship program: Deregistration of a program may be effected upon the voluntary action of the sponsor by submitting a request for cancellation of the registration in accordance with Paragraph (1) of this subsection or upon reasonable cause, by the department instituting formal deregistration proceedings in accordance with Paragraph (2) of this subsection.
 - (1) Deregistration at the request of the sponsor: The department may cancel the registration of an apprenticeship program by written acknowledgment of such request stating the following:
 - (a) the registration is cancelled at the sponsor's request and effective date thereof;
 - (b) that, within 15 days of the date of the acknowledgment, the sponsor shall notify all apprentices of such cancellation and the effective date; that such cancellation automatically deprives the apprentice of individual registration; that the deregistration of the program removes the apprentice from coverage for federal purposes which require the secretary of labor's approval of an apprenticeship program, and that all

apprentices are referred to the department for information about potential transfer to other registered apprenticeship programs.

(2) Deregistration by the department upon reasonable cause:

(a) Deregistration proceedings may be undertaken when the apprenticeship program is not conducted, operated, or administered in accordance with the program's registered standards or with the requirements of this part, including but not limited to: failure to provide on-the-job learning; failure to provide related instruction; failure to pay the apprentice a progressively increasing schedule of wages consistent with the apprentice's skills acquired; or persistent and significant failure to perform successfully. Deregistration proceedings for violation of equal opportunity requirements must be processed in accordance with the provisions under 11.2.2 NMAC equal employment opportunity in apprenticeship state plan.

(b) For purposes of this section, persistent and significant failure to perform successfully occurs when a program sponsor consistently fails to register at least one apprentice, shows a pattern of poor quality assessment results over a period of several years, demonstrates an ongoing pattern of very low completion rates over a period of several years, or shows no indication of improvement in the areas identified by the SAA during a review process as requiring corrective action.

(c) Where it appears the program is not being operated in accordance with the registered standards or with requirements of this part, the department must notify the program sponsor in writing.

(d) The notice sent to the program sponsor's contact person must:

(i) be sent by registered or certified mail, with return receipt requested;

(ii) state the shortcoming(s) and the remedy required; and

(iii) state that a determination of reasonable cause for deregistration will be made unless corrective action is effected within 30 days.

(e) Upon request by the sponsor for good cause, the 30-day term may be extended for another 30 days; during the period for corrective action, the department must assist the sponsor in every reasonable way to achieve conformity.

(f) If the required correction is not effected within the allotted time, the department must send a notice to the sponsor, by registered or certified mail, return requested, stating the following:

(i) the notice is sent under this paragraph;

(ii) certain deficiencies were called to the sponsor's attention (enumerating them and the remedial measures requested, with the dates of such occasions and letters), and the sponsor has failed or refused to take corrective action; and

(iii) based upon the stated deficiencies and failure to remedy them, a determination has been made that there is reasonable cause to deregister the program and the program may be deregistered unless, within 15 days of the receipt of this notice, the sponsor requests a hearing with the department;

(g) If the sponsor does not request a hearing, the department will deregister the program.

(h) If the sponsor requests a hearing, the department will transmit to the administrator a report containing all pertinent facts and circumstances concerning the nonconformity, including the findings and recommendations for deregistration, and copies of all relevant documents and records. Statements concerning interviews, meetings, and conferences will include the time, date, place and persons present, and the administrator will refer the matter to the office of administrative law judges. An administrative law judge will convene a hearing in accordance with Subsection D of this section.

(i) Every order of deregistration must contain a provision that the sponsor must, within 15 days of the effective date of the order, notify all registered apprentices of the deregistration of the program; the effective date thereof; that such cancellation automatically deprives the apprentice of individual registration; that the deregistration removes the apprentice from coverage for federal purposes which require the secretary of labor's approval of an apprenticeship program; and that all apprentices are referred to the department for information about potential transfer to other registered apprenticeship programs.

D. Hearings for deregistration:

(1) Within 10 days of receipt of a request for a hearing, the administrator of the OA shall contact the department's office of administrative law judges to request the designation of the administrative law judge to preside over the hearing. The administrative law judge shall give reasonable notice of such hearing by registered mail, return receipt requested, to the appropriate sponsor. Such notice will include:

(a) a reasonable time and place of hearing;

(b) a statement of the provisions of 11.2.3.28 NMAC pursuant to which the hearing is to be held; and

(c) a concise statement of the matters pursuant to which the action forming the basis of the hearing is proposed to be taken.

(2) The procedures contained in 29 CFR 18 will apply to the disposition of the request for hearing except that:

(a) the administrative law judge will receive, and make part of the record, documentary evidence offered by any party and accepted at the hearing; copies thereof will be made available by the party submitting the documentary evidence to any party to the hearing upon request;

(b) technical rules of evidence will not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination will be applied, where reasonably necessary, by the administrative law judge conducting the hearing; the administrative law judge may exclude irrelevant, immaterial, or unduly repetitious evidence.

(3) The administrative law judge should issue a written decision within 90 days of the close of the hearing record. The administrative law judge's decision constitutes final agency action unless, within 15 days from receipt of the decision, a party dissatisfied with the decision files a petition for review with the administrative review board, specifically identifying the procedure, fact, law or policy to which exception is taken. Any exception not specifically urged is deemed to have been waived. A copy of the petition for review shall be sent to the opposing party at the same time. Thereafter, the decision of the administrative law judge remains final agency action unless the administrative review board, within 30 days of the filing of the petition for review, notifies the parties that it has accepted the case for review. The administrative review board may set a briefing schedule or decide the matter on the record. The administrative review board shall decide any case it accepts for review within 180 days of the close of the record. If not so decided, the administrative law judge's decision constitutes final agency action.

E. Reinstatement of program registration: Any apprenticeship program deregistered under Subsection C of 11.2.3.26 NMAC may be reinstated upon presentation of adequate evidence that the apprenticeship program is operating in accordance with this part. Such evidence shall be presented to the SAC for recommendation to the department for reinstatement.

F. Limitations: Nothing in this part or in any apprenticeship agreement shall operate to invalidate:

(1) any apprenticeship provision in any collective bargaining agreement between employers and employees establishing higher apprenticeship standards; or

(2) any special provision for veterans, minority persons, or women in the standards, apprentice qualifications or operation of the program, or in the apprenticeship agreement, which is not otherwise prohibited by law, executive order, or authorized regulation.

[11.2.3.28 NMAC - Rp, 11.2.3.28 NMAC, 1/30/2018]

HISTORY OF 11.2.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center under:

SLC 77-1, New Mexico State Apprenticeship Council, Policy Manual, 6/7/77.

SLC 78-1, New Mexico State Apprenticeship Council, Policy Manual, 2/21/78.

SLC 78-2, New Mexico State Apprenticeship Council, Policy Manual, 8/17/78.

SLC (NMSAC) 84-1, New Mexico State Apprenticeship Council, Policy Manual, 7/26/84.

NMAC History:

11 NMAC 2.3, New Mexico State Apprenticeship Council, Policy Manual, 4/9/97.

11 NMAC 2.3, New Mexico State Apprenticeship Council, Policy Manual, 11/26/97.

History of Repealed Material:

11.2.3 NMAC repealed effective 1/30/18.