

This is an amendment to 5.5.51 NMAC, Sections 7 through 12, effective June 30, 2010.

**5.5.51.7 DEFINITIONS:** For use in this part, the following definitions apply.

**A. “Above-the-line”** is a film and television industry term derived from where the money is budgeted for creative talent, writers, directors and producers. This term means job positions that are associated with the creative or financial control of a film or multimedia project, generally not the technical aspects.

**B. “Below-the-line”** is a film and television industry term derived from where the money is budgeted for technical crew that shall work on a film or multimedia project as well as for costs related to the studio, equipment, travel, and location. In regards to job positions, this term means technical crew that does not have direct creative or financial control of the project nor receive residuals.

**C. “Company”** means the contractor for FCAP and is either a temporary film or multimedia production company that was created to produce (one) film or multimedia product or a film or multimedia production company that is permanently based in New Mexico with full-time employees and creates film or television products.

**D. “Craft”** means the specialized area or department in which a film technician works.

**E. “Crew”** means the employees hired by a company to complete a film or multimedia project(s).

**F. “Deal memo”** means the film industry contract that defines the exact terms of a crew member’s employment including but not limited to position title and pay rate.

**G. “FCAP”** means film crew advancement program.

**H. “Film or television credit”** for this program means work on a film or television production for more than one week which was not a student film, internship, unpaid position, documentary, commercial, nor on a project where the budget was under one million dollars and the company did not participate in this program.

**I. “Film technician”** means a crew member working in a below-the-line job position who often is a member of an international alliance of theater and stage employee (IATSE) film union or guild.

**J. “General safety certified”** means a crew member has completed a class or course that meets OSHA standards for general safety associated with working on a film and multimedia project.

**K. “JTIP”** means job training incentive program.

**L. “Non-union”** means the job position is not in the contractual jurisdiction of a film union or film guild.

**M. “Mentor”** means the go-to person for questions and direction or the supervisor of a program participant and has a stronger skill set in relation to the job position in which that participant was hired.

**N. “NM”** means New Mexican.

**O. “Open hours”** means a trainee that qualified for FCAP during a production did not use all 1040 hours available. Hours that remain are considered “open” and may be used for that job position on another production upon qualification.

**P. “On-the-job training”** means gaining experience in a hired and paid position increasing job opportunities for continual employment in the film and television industry.

~~[P.]~~ **Q. “Payroll report”** means the report generated from a payroll company hired by the production company to act as the crew’s payment agent for the film and multimedia project.

~~[Q.]~~ **R. “Principal photography”** means the cameras have started filming and the majority of preparation for a film and multimedia project has been completed; call sheets are now issued to crew members and production reports are completed daily.

~~[R.]~~ **S. “Production”** means the film or multimedia project preparation, principal photography and set break down periods while creating a film or television project.

~~[S.]~~ **T. “Resident”** means an individual who is domiciled in New Mexico. This domicile is the individual’s permanent home; it is a place to which the individual intends to return after any temporary absence. An individual shall have only one domicile. A change in domicile is established only by establishing a physical presence in a new location with intent to abandon the old domicile and make a home in the new location permanently or indefinitely.

~~[T.]~~ **U. “Salaries”** means wages or the hourly pay rate for hours physically worked by trainee during a production.

~~[U.]~~ **V. “Trainee”** means the crew member that shall be learning a new skill set or graduating to a higher job classification through the FCAP and is synonymous with the terms program participant or applicant.

~~[V.]~~ **W. “Wages”** means the hourly pay rate for hours physically worked by trainee during production. It does not include film payments to trainees such as kit rental, holiday pay, travel time, mileage reimbursements, or any payment to employee due to penalties incurred by company during production of the project.

[5.5.51.7 NMAC - Rp, 5.5.51.7 NMAC, 4-30-2009; A, 6-30-2010]

**5.5.51.8 PROGRAM OUTLINE:**

**A.** The following is the program outline for all participating companies:

(1) Each trainee qualifies for a maximum of 1040 hours. As the trainee works on a film or television project, the hours shall be deducted accordingly.

(2) The applicable hours of the qualifying trainees shall only be for the hired position as approved by the New Mexico film division and as noted on the FCAP application and the responsibilities for the qualifying position shall meet the industry standards for that position.

(3) Trainee's pay rate shall be consistent with trainee's job position per this crew member's contract with company and trainee's pay rate shall be higher than the positions in the lower tier of positions under trainee, or per union contractual agreement where applicable.

(4) Any requests for a different job position or mentor ~~[to be permitted in program shall be submitted in writing or via email to the New Mexico film division]~~ to qualify for the program shall be considered by the New Mexico film division, and if approved, noted in file.

**B.** The following is in addition to the program outline in Subsection "A" and shall apply to temporary companies participating in program:

(1) Trainees shall work at least 80 hours in their hired position in order to qualify.

(2) Trainees may qualify for an additional 1040 hours if the training received through this program is used to progress from their current job to a higher job classification or to move laterally into a new skill set and the individual meets program qualifications.

(3) Qualifying participants may apply any unused hours to future on-the-job training work opportunities in the specified job position until the 1040 hours are exhausted.

(4) Unused training hours in a lower level position are forfeited once a trainee moves to a higher level within that skill set and that department.

~~[(5) No more than two film technician trainees and non-union trainees shall qualify per production department on a given production and exceptions may be made with approval by the New Mexico film division prior to the commencement of principal photography when, as an example, a production department has more than ten crew members.]~~

~~[(6)]~~ (5) Qualifying trainees shall work in standard industry job positions as listed in the New Mexico film division FCAP job titles list for individual projects produced by temporary companies.

**C.** The following are in addition to the program outline in Subsection "A" and shall apply to permanent companies participating in program:

(1) Trainees shall complete the 1040 hours to qualify.

(2) Qualifying job positions shall be technical and directly contribute to the creation of a product as determined by the New Mexico film division and shall not relate to distribution of end product(s).

(3) Qualifying trainees shall work in standard industry job positions as listed in the New Mexico film division FCAP job titles list for permanent companies creating products.

(4) Qualifying participants may only participate one time in the program as an employee of this company; however, where the trainee has completed all 1040 hours in the original hired position, requests to participate again will be considered upon written documentation submitted by the employer and by the trainee that verifies the trainee will be advancing to a higher job classification.

[5.5.51.8 NMAC - Rp, 5.5.51.8 NMAC, 4-30-2009; A, 6-30-2010]

**5.5.51.9 TRAINEE ELIGIBILITY:**

**A.** Training applicants shall be certified as a film and multimedia trainee by the New Mexico film division.

**B.** Trainee applicants shall be New Mexico residents.

**C.** Trainee applicants shall raise their film or television position to a higher classification or be adding a completely new skill set.

**D.** Applicants shall not have a film or television credit in a higher position in that department to qualify for 1040 training hours for that position.

**E.** Trainee shall not be a mentor simultaneously on a production on projects produced by temporary companies.

[5.5.51.9 NMAC - Rp, 5.5.51.9 NMAC, 4-30-2009; A, 6-30-2010]

**5.5.51.10 MENTOR ELIGIBILITY AND QUALIFICATIONS:**

- A.** Mentors shall be certified as a film and multimedia mentor by the New Mexico film division.
  - B.** Mentors of trainees shall be New Mexico residents.
  - C.** Any requests for mentors who are not NM residents shall be submitted in writing or via email to the New Mexico film division.
  - D.** A mentor shall not be a trainee simultaneously during a production on projects produced by temporary companies.
  - E.** Mentor shall work in the same or directly related department with the trainees that they supervise for this program.
- [5.5.51.10 NMAC - Rp, 5.5.51.10 NMAC, 4-30-2009; A, 6-30-2010]

**5.5.51.11 COMPANY ELIGIBILITY AND ADMINISTRATIVE REQUIREMENTS:**

- A.** Company shall submit the JTIP for film & multimedia application part one for FCAP.
  - B.** Company shall enter into a contract as outlined by the New Mexico economic development department; the term of the contract shall be based on a time period which shall allow the contractor (company) to complete its obligation to hire and provide on-the-job training opportunities for the qualified individuals and complete paperwork involved.
  - C.** The approval of this contractual agreement from the New Mexico film division and the chairperson of the job training incentive program (JTIP) board shall grant funding to the contractor for the purpose of conducting this training.
  - D.** Company shall have a local office where claims and paperwork shall be processed or a designee shall be available to conduct the appropriate paperwork.
  - E.** Company entering into a contractual agreement with economic development department shall return the program contractual agreement and program application to the New Mexico film division ~~[either prior to the start of principal photography in New Mexico or within the first week of first trainee's employment in the qualifying positions].~~ This contract will be requested by the New Mexico film division prior to principal photography.
  - F.** Completed FCAP trainee applications must be submitted to the New Mexico film division by the company.
  - G.** Company is subject to compliance reviews throughout the term of the contract; the compliance review shall consist of program and fiscal surveys.
  - H.** Company shall submit time records and reimbursement invoices as established by the economic development division to the New Mexico economic development department, which is the payment agent.
  - I.** The participating company shall submit forms and reports as established by the New Mexico film division of the New Mexico economic development department which may include:
    - (1) JTIP for film & multimedia application part one for FCAP; and
    - (2) department of finance and administration (DFA) tax information form; and
    - (3) JTIP for film & multimedia application part two for FCAP; and
    - (4) JTIP for film & multimedia agreement for FCAP; and
    - (5) FCAP participants' applications; and
    - (6) production's final crew list or equivalent as determined by the New Mexico film division; and
    - (7) a minimum of one call sheet or production report or equivalent as determined by the New Mexico film division; and
    - (8) payroll reports for each qualified trainee that verify hours worked and all rates per hours; and
    - (9) a notarized invoice.
  - J.** All paperwork and forms shall be submitted to the development training program administrator of the New Mexico film division of the economic development department.
  - K.** Companies that fail to comply with all established operating requirements and closeout procedures are not eligible for funding and may not be eligible to apply for future participation.
- [5.5.51.11 NMAC - Rp, 5.5.51.11 NMAC, 4-30-2009; A, 6-30-2010]

**5.5.51.12 REIMBURSEMENT OF TRAINING COSTS:**

- A.** Reimbursement shall be made to the participating company in accordance with the terms of JTIP for film & multimedia agreement for FCAP.
- B.** Failure to fully and accurately complete administrative requirements may require sending the invoice back to company for correction and this process shall delay reimbursement payment.

- C.** The invoice or claim for reimbursement may be submitted during the contract period, when trainees complete the number of contracted hours.
  - D.** Trainee wages shall be reimbursed upon completion of the training project (not to exceed 1040 hours) and the conclusion of the production in New Mexico.
  - E.** Reimbursement from the state shall be based on the ~~[negotiated contractual agreement that includes a wage range outlined in JTIP for film & multimedia application part two for FCAP to meet any wage adjustments during the training period]~~ contractual agreement.
  - F.** Reimbursements shall be based upon the number of trainees who have qualified for the training program.
  - G.** Reimbursement shall not exceed fifty percent (50%) of the trainees' rates multiplied by the hours trained.
  - H.** Training costs shall be reimbursed to the company based on the number of qualified employees, their wages from hours physically worked ~~[, and the estimated production time as written in the contract]~~.
  - I.** The contract amount established in the contract shall remain the same for the length of the agreement.
  - J.** Trainee wages shall be reimbursed upon completion of training on the production which shall not exceed 1040 hours per trainee at the conclusion of production in New Mexico and when company qualifications and requirements have been met.
  - K.** The New Mexico film division shall make arrangements to have an audit at the end of the contract that may be facilitated by and completed at the New Mexico film division to verify program compliance by either an independent accountant or a representative of the New Mexico film division.
  - L.** In the case where overpayment has been made by the state of New Mexico to the production company, the production company shall refund the department the difference of the correct reimbursement payment from the paid reimbursement amount.
- [5.5.51.12 NMAC - Rp, 5.5.51.12 NMAC, 4-30-2009; A, 6-30-2010]