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 2021sustainable 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

[3.3.35.13 NMAC - Rp, 3.3.35.13 NMAC, 07/12/2022]

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.