

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 7 STATE PERSONNEL ADMINISTRATION
PART 5 RECRUITMENT, ASSESSMENT, SELECTION

1.7.5.1 ISSUING AGENCY: State Personnel Board.
[1.7.5.1 NMAC - Rp, 1 NMAC 7.5.1, 07/07/01]

1.7.5.2 SCOPE: All state agencies in the classified service.
[1.7.5.2 NMAC - Rp, 1 NMAC 7.5.2, 07/07/01]

1.7.5.3 STATUTORY AUTHORITY: NMSA 1978, Sections 10-9-10(A), 10-9-12(A), 10-9-13 (C), 10-9-13(F), 10-9-13(I), 10-9-13.2, 10-9-18(B), 10-9-22, 10-9-23; NMSA 1978, Section 20-4-9; NMSA 1978, Sections 24-2B-1 to 24-2B-8; NMSA 1978, Sections 28-2-1 to 28-2-6, 28-10-12.
[1.7.5.3 NMAC - Rp, 1 NMAC 7.5.3, 07/07/01; A, 11/14/02]

1.7.5.4 DURATION: Permanent.
[1.7.5.4 NMAC - Rp, 1 NMAC 7.5.4, 07/07/01]

1.7.5.5 EFFECTIVE DATE: 07/07/01 unless a later date is cited at the end of a section.
[1.7.5.5 NMAC - Rp, 1 NMAC 7.5.5, 07/07/01]

1.7.5.6 OBJECTIVE: The objective of Part 5 of Chapter 7 is: to provide a system for the recruitment, examination and selection of applicants for employment in the classified service.
[1.7.5.6 NMAC - Rp, 1 NMAC 7.5.6, 07/07/01; A, 11/14/02]

1.7.5.7 DEFINITIONS: “Open for recruitment” means soliciting applications from the general public and state employees for vacant positions.
[1.7.5.7 NMAC - Rp, 1 NMAC 7.5.7, 07/07/01]

1.7.5.8 VACANT POSITIONS:

- A.** All vacant positions to be filled shall be open for recruitment unless otherwise authorized by the director or provided for in these rules.
- B.** Positions in the classified service shall be filled at the assigned classification. An underfill may be approved by the director. An authorized underfill may not exceed one year unless extended by the director.
- C.** The director may approve a position to be doublefilled for up to one year.
- D.** Agencies may allow part-time employees to share the same position.

[1.7.5.8 NMAC - Rp, 1 NMAC 7.5.8, 07/07/01; A, 7-15-05]

1.7.5.9 RECRUITMENT:

- A.** The director shall establish a means to effectively advertise and recruit for vacant positions within the classified service.
- B.** Any qualified applicant shall have the opportunity to compete for vacant positions open for recruitment without regard to race, color, religion, national origin, ancestry, sex, sexual orientation, age, or mental or physical disability unless based on a bona fide occupational requirement.
- C.** Agencies shall be sensitive to creating diversity in the workplace.
- D.** Applications shall be filed in accordance with the director-established recruitment criteria, received within the prescribed time limits and be for positions open for recruitment.

[1.7.5.9 NMAC - Rp, 1 NMAC 7.5.9, 07/07/01; A, 11/14/02; A, 7-15-05]

1.7.5.10 APPLICATIONS:

- A.** The director shall establish application procedures which include, among other things, criteria that will ensure compliance with federal and/or state law. Information on gender, ethnicity, and age of applicants shall be utilized only for affirmative action and other non-discriminatory purposes.
- B.** The director shall reject an application and not accept any application from the applicant if the applicant:
 - (1) has made any false statement or produced any false document in support of the application; or

(2) has directly or indirectly given, paid, offered, solicited, or accepted any money or other valuable consideration or secured or furnished any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the classified service.

C. In the event an application of an employee is rejected, under the provisions of **Subsection B of 1.7.5.10 NMAC**, the applicant's employing agency shall take appropriate action and notify the director.

D. An applicant whose application has been rejected may appeal to the board in accordance with the procedures established by the director.

[1.7.5.10 NMAC - Rp, 1 NMAC 7.5.10, 07/07/01; A, 11/14/02; A/E, 5/19/10; Re-pr, 7/30/10]

1.7.5.11 EXAMINATION:

A. Security:

(1) The director shall maintain the security of all examinations.

(2) Examinations shall be developed by the office in accordance with established professional techniques and relevant federal laws, regulations, and guidelines. Examinations shall measure critical or important knowledge, skills, and abilities necessary for successful job performance.

(3) Except as provided in **Paragraph (4) of Subsection A of 1.7.5.11 NMAC** no agency shall administer any examination to an applicant or employee without the examination and the examination administration having been approved by the director unless otherwise authorized by statute.

(4) An agency may request a description or demonstration of the skill or ability needed to perform an essential job function in accordance with the *Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 Note 29C.F.R. Part 1630.14(a) Pre-employment inquiry)*.

B. Exemptions from Examinations:

(1) The director shall exempt from examinations those applicants who possess recognized licensure, registration, or certification by the state of New Mexico and who are applying for positions in the classified service that require such licensure, registration, or certification.

(2) The director shall exempt from examinations applicants who, in the course of their duties:

(a) develop, administer, or otherwise have access to such examinations; or

(b) formerly developed or administered such examinations within a period of one year from separating from the office.

C. **Administration of Examinations:** In accordance with the provisions of *NMSA 1978, Section 10-9-12(F)*, the director shall supervise all examinations and establish procedures for their administration.

D. Preference Points:

(1) In accordance with the provisions of *NMSA 1978, Section 10-9-13.2 and NMSA 1978, Section 20-4-9*, veterans honorably discharged from the United States armed forces and applicants currently serving in the national guard shall have five points added to their final passing numerical scores on examinations. Veterans honorably discharged from the United States armed forces with a service-connected disability shall have 10 points added to their final passing numerical scores on examinations. A veteran with or without a service-connected disability has his/her name placed on the employment list in accordance with numerical rating of other veterans and non-veterans.

(2) In accordance with the provisions of *NMSA 1978, Section 10-9-13*, applicants who pass the examination shall have two preference points added for each year of residency in New Mexico, not to exceed 10 points.

[1.7.5.11 NMAC - Rp, 1 NMAC 7.5.11, 07/07/01; A, 11/14/02; A, 7-15-05]

1.7.5.12 SELECTION:

A. In accordance with the purpose of the *Personnel Act NMSA, Section 10-9-2*, selection shall be based solely on qualification and ability. Selection for any appointment to positions in the classified service shall be justified in writing and made from employment lists.

B. All employers subject to the *Criminal Offender Employment Act [NMSA 1978, Sections 28-2-1 to 28-2-6]* may take into consideration a conviction, but the conviction will not operate as an automatic bar to obtaining public employment. Employer may only take into consideration a conviction after the applicant has been selected as a finalist for the position.

C. Agencies shall develop policies governing their use of the employment lists; such policies shall be submitted to the director for approval.

D. Agencies shall be sensitive to creating diversity in the workplace.

E. Employment lists shall include names of ranked candidates who have made application and met the established requirements plus any candidates certified by the New Mexico department of education, division of vocational rehabilitation, the commission for the deaf and hard of hearing, or the commission for the blind, in accordance with the provisions of *NMSA 1978, Section 28-10-12*.

(1) The director shall certify the names of former employees who are currently receiving temporary total or permanent partial workers' compensation benefits, resultant from an injury sustained while employed in the classified service and who apply for a position in accordance with the provisions of *1.7.10.12 NMAC*.

(2) The director shall certify only the name(s) of former employees who are currently eligible for reemployment from a reduction in force per *1.7.10.10 NMAC*.

F. Temporary promotions: Employees may be temporarily promoted for a period not to exceed 12 months to a temporarily or effectively vacant position for which the agency certifies that the employee holds qualifications and abilities necessary for successful job performance. At the end of the temporary promotion period, employees shall return to their former position without right of appeal.

G. Intra-agency transfers: An agency may transfer an employee without the employee's consent to a position in the same classification within the same geographic location, which is 35 miles from the boundaries of the community in which the employee is employed or if the established requirements state that willingness to accept a change of geographic location is a condition of employment.

H. Exempt to career appointments: Employment in the exempt service shall not count towards the probationary period required by *Subsection A of 1.7.2.8 NMAC*.

I. Emergency appointments: Emergency appointments shall be made in accordance with *1.7.2.12 NMAC*.

J. Reduction: Employees may request a classification reduction to a position for which the agency certifies that the employee holds qualifications and abilities necessary for successful job performance.

K. Physical examinations: Agencies may require physical examinations of candidates who have been selected for appointment contingent upon their meeting the prescribed physical health standards. The costs of such physical examinations shall be borne by the agency.

L. Human immunodeficiency virus-related (AIDS) test: No agency shall require a candidate or employee to take the human immunodeficiency virus-related (AIDS) test or disclose the results of same test as a condition of selection, promotion or continued employment unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification for the job in question. Agencies must adhere to the provisions of the *Human Immunodeficiency Virus Test Act NMSA 1978 Sections 24-2B-1 to 24-2B-8 Cum. Supp. 1993*). [1.7.5.12 NMAC - Rp, 1 NMAC 7.5.12, 07/07/01; A, 11/14/02; A, 7-15-05; A/E, 5-19-10; Re-pr, 7/30/10]

HISTORY OF 1.7.5 NMAC:

Pre-NMAC History:

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as:

SPB Rule 4, Applications and Tests, filed 05-22-80;

SPB Rule 4, Applications and Tests, filed 06-03-81;

SPB Rule 4, Applications and Tests, filed 10-21-82;

SPB Rule 4, Applications and Tests, filed 06-28-83;

SPB Rule 4, Applications and Tests, filed 10-17-86;

SPB-4, Tests, filed 04-04-90;

SPB-4, Tests, filed 10-19-90;

SPB 7, Recruitment, Applications, Tests, filed 12-15-92;

SPB 7, Recruitment, Applications, Tests, filed 03-18-94.

History of Repealed Material:

1 NMAC 7.5, Pay, filed 06-13-97.

Other History:

1 NMAC 7.6, Recruitment, Applications, Tests, filed 01-12-96 replaced SPB 7, filed 03-18-94;

1 NMAC 7.6, Recruitment, Applications, Tests, filed 05-02-96;

1 NMAC 7.5, Recruitment, Applications, Selection, filed 06-13-97 replaced 1 NMAC 7.6, filed 05-02-96;

1 NMAC 7.5, Recruitment, Assessment, Selection, filed 06-13-97 replaced by 1.7.5 NMAC, Recruitment, Assessment, Selection, effective 07/07/01.