

Michelle Lujan Grisham

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Director



State Personnel Board

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Address: 2600 Cerrillos Road, Santa Fe, NM 87505-3258

Phone: (505) 476-7759 | Fax: (505) 476-7949 | Web: <https://www.spo.state.nm.us/>

BEFORE THE NEW MEXICO STATE PERSONNEL BOARD

IN RE: RULEMAKING PROCEEDING FOR AMENDMENTS TO 1.7.1 NMAC – GENERAL PROVISIONS
REPEAL AND REPLACEMENT OF 1.7.5 NMAC – RECRUITMENT, ASSESSMENT, SELECTION
REPEAL AND REPLACEMENT OF 1.7.8 NMAC – DRUG AND ALCOHOL ABUSE
REPEAL AND REPLACEMENT OF 1.7.9 NMAC – PERFORMANCE APPRAISALS
REPEAL AND REPLACEMENT OF 1.7.11 NMAC – DISCIPLINE

CONCISE EXPLANATORY STATEMENT

The New Mexico State Personnel Board (the "Board") hereby amends 1.7.1 NMAC – General Provisions, repeals and replaces and amends 1.7.5 NMAC – Recruitment, Assessment, Selection, repeals and replaces and amends 1.7.8 NMAC – Drug and Alcohol Abuse, repeals and replaces and amends 1.7.9 NMAC – Performance Appraisals, and repeals and replaces and amends 1.7.11 NMAC – Discipline. The rules are currently codified in Title 1, Chapter 7, Part 1; Title 1, Chapter 7, Part 5; Title 1, Chapter 7, Part 8; Title 1, Chapter 7, Part 9; and Title 1, Chapter 7, Part 11 of the New Mexico Administrative Code.

(1) Statutory Authority for Rule Promulgation:

Under the Personnel Act, "The [personnel] director shall...recommend to the board rules [he] considers necessary or desirable to effectuate the Personnel Act," and "the board shall...promulgate regulations to effectuate the Personnel Act[.]" NMSA 1978, §§ 10-9-10(A), 12(E).

(2) Date of Notice in New Mexico Register:

The Notice of Rulemaking was published in Volume XXXV, Issue: 21 of the New Mexico Register on November 5, 2024.

(3) Date of Meeting Approving Rule:

December 6, 2024

(4) Date of Adoption of Rule:

December 6, 2024

(5) Date of Publication of Adopted Rule in New Mexico Register:

The adopted Rule will be published in Volume XXXVI, Issue: 1 of the New Mexico Register on January 14, 2025.

(6) Effective Date of Rule:

January 14, 2025 (1.7.13.10 NMAC "The Board shall determine the effective date of Rules....").

(7) Reasons for Adopting Rule:

Amendments to 1.7.1 – General Provisions

The change to 1.7.1.7 Definitions, removes definitions for "Agency," "Board," "Director," "Employee," "Employer," and "Probationer," as they are already defined in statute.

The change to 1.7.1.7 Definitions, adds a definition for "Service of Notice," that explains Service of Notice "shall be complete on the date the notice is mailed via certified mail to the address of record, delivered to a courier for delivery to the address of record, or hand delivered."

The change to 1.7.1.7 Definitions, edit the definitions for "Anniversary date," "Disciplinary Action," "Domestic Partner," "Examination," "Line Authority," "Office," "Signature," "Supervisor," to provide clarity.

The change to 1.7.1.11 Computation of Time, clarifies the circumstances under which three (3) calendar days are added to response times.

The change to 1.7.1.13 Settlement Agreements, clarifies the circumstances under which the State Personnel Office Director approves settlement agreements.

The change to 1.7.1.15 Training and Development, explains that the State Personnel Director establishes and maintains a training and development work plan.

Repeal and Replacement of 1.7.5 NMAC – Recruitment, Assessment, Selection

The change to 1.7.5.7 Definitions, defines "Doublefill" as "when two employees are paid to work in the same position."

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The change to 1.7.5.7 Definitions, defines "Overfill" as "when an employee is assigned to a position with a higher pay band than the position's budgeted pay band."

The change to 1.7.5.7 Definitions, defines "Recruitment Waiver" as "a candidate for hire is identified through a non-competitive process in lieu of the position being posted and advertised."

The change to 1.7.5.7 Definitions, defines "Underfill" as "when a candidate is hired for a position that they are not fully qualified for, but who can gain the necessary skills and experience through on the job training. Once the candidate has met the minimum experience requirements, they will be promoted to the position's actual pay band."

The change to 1.7.5.8 Vacant Positions, explains that all budgeted vacant positions shall be open for recruitment unless a recruitment waiver is authorized by the State Personnel Office Director.

The change to 1.7.5.9 Recruitment, clarifies that the State Personnel Office Director establishes the recruitment process and that the State Personnel Office Director establishes recruitment criteria.

The change to 1.7.5.10 Applications, removes agency obligation to notify the State Personnel Office Director when rejecting applications under certain circumstances and removes a rejected applicant's ability to appeal to the State Personnel Board.

The change to 1.7.5.11 Assessment of Qualifications, removes the requirement that the State Personnel Office Director secure all examinations, administer all examinations, and exempts certain applicants from examinations.

The change to 1.7.5.12 Selection, explains that agencies certify employment lists and removes the prohibition of Human Immunodeficiency Virus (HIV) related testing.

Repeal and Replacement of 1.7.8 NMAC – Drug and Alcohol Abuse

The change to 1.7.8.7 Definitions, edits the definition of "Safety-sensitive position" to read "a position in which performance by a person under the influence of drugs or alcohol would constitute an immediate or direct threat of injury or death to that person or another, or as otherwise provided by state or federal law."

The change to 1.7.8.9 Designation of Safety Sensitive Positions, removes the State Personnel Board's role in approving safety-sensitive positions.

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The change to 1.7.8.11 Authorized Drug and Alcohol Testing, clarifies that the State Personnel Office Director shall maintain a list of positions designated as being safety sensitive.

The change to 1.7.8.13 Drug Tests, cites the federal regulations establishing the drug cutoff concentrations for urine drug tests.

The change to 1.7.8.14 Alcohol Tests, removes the provision that agencies can request to lower the test level for blood alcohol tests.

Repeal and Replacement of 1.7.9 NMAC – Performance Appraisals

The change to 1.7.9.8 Form, establishes that a performance appraisal shall be initiated within forty-five (45) days of hire, reassignment, promotion, demotion, reduction or transfer.

The change to 1.7.9.9 Performance Appraisal, requires managers and supervisors to complete a refresher course of study on employee performance appraisal every three (3) years, or as needed.

Repeal and Replacement of 1.7.11 NMAC – Discipline

The change to 1.7.11.12 Administrative Leave Pending Disciplinary Action, explains that administrative leave pending disciplinary action is paid administrative leave.

The change to 1.7.11.13 Employee in Career Status, clarifies when three (3) calendar days are added to response times.

(8) Reasons for Changes from Published Proposed Rules:

The changes from the published proposed rules and the adopted rules include adding punctuation and correcting minor typographical errors for clarity and providing clarity that references to all laws and regulations include state and federal laws and regulations.

(9) Reasons for Not Accepting Substantive Arguments from Public Comment:

There were no public comments related to the amendment of 1.7.1 NMAC, the repeal and replacement of 1.7.5 NMAC, the repeal and replacement of 1.7.8 NMAC, the repeal and replacement of 1.7.9 NMAC, and the repeal and replacement of 1.7.11 NMAC.

The amended Rule and the repealed and replaced Rules, as authorized by the Board during its regular meeting held December 6, 2024, are hereby adopted as of the date of this Concise Explanatory Statement.

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IT IS SO ORDERED,

ON BEHALF OF THE NEW MEXICO
STATE PERSONNEL BOARD

A handwritten signature in black ink, appearing to read "Carol Parker", written in a cursive style.

CAROL PARKER, VICE-CHAIR

DATE: 12/24/24

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