

NOTICE OF RULEMAKING

The Department of Finance and Administration, Financial Control Division has scheduled a public hearing for the proposed amendment of New Mexico Administrative Code (NMAC) rule 2.42.2, *Regulations Governing the Per Diem and Mileage Act*. The proposed amendment seeks to:

- Correct punctuation and grammatical errors contained in the rule;
- Set an allotment for meals per overnight period;
- Remove the requirement for itemized receipts for meals when traveling on actuals;
- Increasing the threshold for additional lodging approval from \$215 to \$350; and
- Remove the ability to be reimbursed for tips on meals.

Notice Date: May 6, 2025

Hearing Date: June 5, 2025

Adoption Date: Proposed as June 12, 2025

Effective Date: Proposed as June 24, 2025

Technical Citations: 2.42.2 NMAC

The Department is proposing to amend 2.42.2 NMAC as follows:

Section 7:

E. "Employee" means any person who is ~~[in the employ of]~~ employed by any New Mexico state agency or local public body within New Mexico whose salary is paid either completely or partially from public money but does not include jurors or jury commissioners.

H. "Local public body" means every political subdivision of the state, whether created under general or special act including, but not limited [,] to₂ counties, municipalities, drainage, conservancy, irrigation, school₂ or other districts, that receives or expends public money from whatever source derived.

J. "Normal work day" means eight hours within a nine-hour period for all public officers and employees₂ both salaried and non-salaried, regardless of the officers' or employees' regular work schedule.

O. "Travel" means for per diem purposes, being on official business away from home as defined in Subsection [F] G above and at least 50 miles from the designated post of duty of the public officer or employee. However, non-salaried public officers are eligible for per diem for attending meetings in accordance with Subsection C of 2.42.2.8 NMAC.

Section 8:

B. Per diem rate computation: Except as provided in Subsections C through I of this section, per diem rates for travel by public officers and employees shall be computed as follows:

(1) ~~[Partial day]~~ Same day travel per diem rate: Public officers or employees who occasionally and irregularly travel shall be reimbursed for travel which does not require overnight lodging, but extends beyond a normal work day as published on the department of finance and administration website on May 1 for the preceding fiscal year.

(2) Overnight travel: Regardless of the number of hours traveled, travel for public officers and employees where overnight lodging is required shall be reimbursed as published on the department of finance and administration website on May 1 for the preceding fiscal year or actual lodging and meal expenses under 2.42.2.9 NMAC.

(3) Return from overnight travel: On the last day of travel when overnight lodging is no longer required, partial day reimbursement shall be made in accordance with applicable rates, ~~[To calculate the number of hours in the partial day, begin with the time the traveler initially departed. Divide the number of hours~~

traveled by 24. The hours remaining constitute the partial day which shall be reimbursed] as published on the department of finance and administration website on May 1 for the preceding fiscal year.

(4) Special area designations: For all officers and employees, the in-state special area shall be Santa Fe county.

D. Temporary assignment: Public officers and employees may be reassigned temporarily to another duty station.

(1) Routine reassignment: Public officers and employees subject to periodic reassignment of duty stations or districts as a normal requirement of their employment will not be eligible for per diem rates after the time of arrival at the new duty station or district.

(2) Non-routine reassignment: Public officers or employees not normally subject to periodic reassignments who are temporarily assigned to another office of a state agency away from home will receive per diem for the first 30 calendar days of their assignment only, unless ~~[approval of the secretary is given to extend]~~ the secretary approves extending per diem payments upon showing that the assignment is necessary and temporary. Except in such extraordinary circumstances, after 30 calendar days, the place where the employee or officer is assigned will be regarded as the designated post of duty.

E. New Mexico department of transportation: The New Mexico department of transportation may adopt special policies pertaining to payment of per diem rates for temporary assignments. Such policies shall be subject to the ~~[annual approval of the secretary]~~ secretary's annual approval and must not exceed the rates set by the department of finance and administration.

F. Department of public safety: The department of public safety may adopt special policies pertaining to payment of per diem rates, mileage and subsistence allowances authorized by law for commissioned officers. Such policies shall be subject to ~~[annual approval of the secretary]~~ the secretary's annual approval and must not exceed the rates set by the department of finance and administration.

H. Per diem in conjunction with other leave: While traveling, if a public officer or employee takes sick[, annual] or authorized leave without pay for more than four hours of the normal work day, per diem shall not be allowed for that day unless authorized in writing by the agency head.

Section 9:

A. Applicability: Upon written request of a public officer or an employee, agency heads may ~~[grant written approval for]~~ approve a public officer or employee of that agency or local public body to be reimbursed actual expenses in lieu of the per diem rate where overnight travel is required.

B. Overnight travel: For overnight travel for state officers and employees where overnight lodging is required, the public officer or employee will be reimbursed as follows:

(1) Actual reimbursement for lodging: A public officer or an employee may elect to be reimbursed actual expenses for lodging not exceeding the single occupancy room charge (including tax) in lieu of the per diem rate set forth in 2.42.2.8 NMAC. Whenever possible, public officers and employees should stay in hotels which offer government or discounted rates. Agencies, public officers or employees who incur lodging expenses in excess of \$~~[215.00]~~ 350.00 per night must obtain the signature of the agency head or chairperson of the governing board on the travel voucher prior to requesting reimbursement and on the encumbering document at the time of encumbering the expenditure.

(2) Actual reimbursement for meals: ~~[Actual expenses for meals are limited by]~~ A daily meal allotment is reimbursed in accordance with Paragraph (2) of Subsection K of Section 10-8-4 NMSA 1978 to the rates published on the department of finance and administration website on May 1st for the preceding fiscal year.

(3) Receipts required: The public officer or employee must submit receipts for the actual ~~[meal and]~~ lodging expenses incurred. Under circumstances where the loss of receipts would create a hardship, an affidavit from the officer or employee attesting to the expenses may be substituted for actual receipts. The affidavit must accompany the travel voucher and include the signature of the agency head or governing board.

C. Return from overnight travel: On the last day of travel when overnight lodging is no longer required, partial day reimbursement shall be made in accordance with Paragraph (2) of Subsection K of Section 10-8-4 NMSA 1978 to the rates published on the department of finance and administration website on May 1st for the preceding fiscal year. ~~[To calculate the number of hours in the partial day, begin with the time the traveler initially departed on the travel. Divide the total number of hours traveled by 24. The hours remaining constitute the partial~~

~~day which shall be reimbursed as published on the department of finance and administration website on May 1 for the preceding fiscal year.] No reimbursement for actual expenses will be granted in lieu of partial day per diem rates.~~

Section 12:

A. Public officers and employees may be reimbursed for the following expenses provided that receipts for all such expenses are attached to the reimbursement voucher:

- (1) taxi or other transportation fares at the destination of the traveler;
- (2) gratuities as allowed by the agency head or designee, not to exceed twenty percent per transaction, excluding meals;
- (3) parking fees;
- (4) actual costs for travel by common carrier, provided such travel is accomplished in the most economical manner practical;
- (5) rental cars or charter aircraft, provided less expensive public transportation is not available or appropriate;
- (6) registration fees for educational programs or conferences, provided, if the fee includes lodging or meals, then no per diem rates shall be paid and only actual expenses paid by the officer or employee and not included in the fee shall be reimbursed within the limits of 2.42.2.9 NMAC; and
- (7) professional fees or dues that are beneficial to the agency's operations or mission.
- (8) Under circumstances where the loss of receipts would deny reimbursement and create a hardship, an affidavit from the officer or employee attesting to the expenses may be substituted for actual receipts. The affidavit must accompany the travel voucher and include the signature of the agency head or governing board.

Appendix A: ~~[Deleted in its Entirety]~~

Appendix B: ~~[Deleted in its Entirety]~~

These proposed rule changes will be contained in 2.42.2 NMAC. The register and the proposed rule are available on the DFA website at <https://www.nmdfa.state.nm.us/>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting DFA's General Counsel's officer at dfalegal@dfa.nm.gov.

The DFA plans to adopt this rule on June 12, 2025.

A public hearing to receive testimony on this proposed rule will be held on June 5, 2025, at 9:30 a.m. The hearing will be held at the New Mexico Department of Finance and Administration, Bataan Memorial Building, 407 Galisteo St. Santa Fe, NM 87501, State Budget Conference Room and via Microsoft Teams.

Join Microsoft Teams Meeting

Join the meeting now

Meeting ID: 257 637 764 205

Passcode: Fs7cX3on

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact our staff to discuss your accessibility needs at least one week prior, or as soon as possible, by emailing the Department of Finance and Administration, General Counsel Office at: dfalegal@dfa.nm.gov or 505-827-3985.

DFA will make copies of all comments available upon request, either by providing copies directly to a requestor or by making them available on the DFA website or at a location within the requestor's county.

Interested persons may address written comments to:

Department of Finance and Administration, Financial Control Division
ATTN: 2.42.2 NMAC Public Comments
407 Galisteo St.
Bataan Memorial Building
Santa Fe, NM 87501

Recorded comments may be left at (505) 827-3985. Interested persons may also address comments via electronic mail to: dfalegal@dfa.nm.gov. Written mail, electronic mail, and recorded comments must be received no later than 5:00 p.m. MT on June 5, 2025. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the DFA website at <https://www.nmdfa.state.nm.us/> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.