

**This is an amendment to 2.42.2 NMAC, Sections 7, 8, 9, and 12, effective 6/24/2025.**

**2.42.2.7 DEFINITIONS:** As used in this rule:

- A. “Agency head”** means:
- (1) the cabinet secretary of departments and their administratively attached boards and commissions;
  - (2) the director for other agencies and institutions and their administratively attached boards and commissions;
  - (3) the superintendent of regulation and licensing for boards and commissions attached to the regulation and licensing department;
  - (4) the chairperson, president or executive secretary for remaining boards and commissions; and
  - (5) the chief executive, chief administrative officer, or governing body for local public bodies.
- B. “Attend”** has the same meaning as ascribed to it in Section 10-8-3 NMSA 1978.
- C. “Board or committee meeting”** means the formal convening of public officers who comprise a board, advisory board, commission or committee even if no further business can take place because of the lack of a quorum.
- D. “Designated post of duty”** means the address of a public officer’s or employee’s assignment as determined by the agency.
- 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.
- F. “Governmental entity”** means a New Mexico state agency or local public body within New Mexico.
- G. “Home”** means:
- (1) for per diem purposes, the area within a 50-mile radius of the place of legal residence as defined in Section 1-1-7 NMSA 1978;
  - (2) for mileage purposes, the place of legal residence as defined in Section 1-1-7 NMSA 1978.
- H. “Local public body”** means every political subdivision of the state, whether created under general or special act including, but not limited[,], to counties, municipalities, drainage, conservancy, irrigation, school<sub>2</sub> or other districts, that receives or expends public money from whatever source derived.
- I. “Non-salaried public officer”** means a public officer serving as a member of a board, advisory board, committee or commission who is not entitled to compensation, but is entitled to payment of per diem rates and mileage.
- J. “Normal work day”** means eight hours within a nine-hour period for all public officers and employees<sub>2</sub> both salaried and non-salaried, regardless of the officers’ or employees’ regular work schedule.
- K. “Occasionally and irregularly”** means not on a regular basis and infrequently as determined by the agency. For example, an employee is not entitled to per diem rates under 2.42.2.8 NMAC if the employee either travels once a week or travels every fourth Thursday of the month. However, the employee is entitled to per diem rates under 2.42.2.8 NMAC if the employee either travels once a month with irregular destinations and at irregular times or travels four times in one month and then does not travel again in the next two months, so long as this is not a regular pattern.
- L. “Out of state”** means beyond the exterior boundaries of the state of New Mexico.
- M. “Public officer”** means every elected or appointed officer of a governmental entity, including but not limited to:
- (1) officers of the judicial branch of state government, including judges;
  - (2) officers of the legislative branch of state government, except legislators; and,
  - (3) all board, advisory board, committee and commission members elected or appointed to a board, advisory board, committee or commission specifically authorized by law or validly existing as an advisory committee pursuant to Section 9-1-9 NMSA 1978.
- N. “Secretary”** means the secretary of finance and administration.
- 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.

**P. “Travel voucher”** means a payment voucher submitted for the purpose of claiming reimbursement for travel expenditures.

[2.42.2.7 NMAC - Rp, 2.42.2.7 NMAC, 01/16/2024; A, x/x/2025]

### **2.42.2.8 PER DIEM RATES AND PRORATION:**

**A. Applicability:** Per diem rates shall be paid to public officers and employees only in accordance with the provisions of this section. Per diem rates shall be paid without regard to whether expenses are actually incurred. Where lodging or meals are provided or paid for by the agency, the governing body, or another entity, the public officer or employee is entitled to reimbursement only for actual expenses under 2.42.2.9 NMAC.

**B. ~~Partial day~~ Same day travel 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 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.

**C. Board, commission and committee members:** Non-salaried public officers may receive per diem as follows:

**(1) Official board, commission and committee meetings:**

**(a) State non-salaried public officers:** Non-salaried public officers of the state may elect to receive:

**(i)** \$95.00 if the officer physically attends the meeting for four hours or more during a single calendar day; or

**(ii)** \$45.00 if the officer physically attends the meeting for less than four hours or the officer attends a virtual meeting of any duration during a single calendar day; or

**(iii)** per diem rates in accordance with Subsection B of this section.

**(b) Local non-salaried public officers:** Non-salaried public officers of local public bodies may elect to receive:

**(i)** \$95.00 if the officer physically attends the meeting for four hours or more during a single calendar day; or

**(ii)** \$45.00 if the officer physically attends the meeting for less than four hours or the officer attends a virtual meeting of any duration during a single calendar day; or

**(iii)** per diem rates in accordance with Subsection B of this section provided that the local governing body has not established a lesser rate.

**(c) Municipal non-salaried public officers:** Non-salaried public officers of municipalities may elect to receive either:

**(i)** \$95.00 if the officer physically attends the meeting for four hours or more during a single calendar day; or

**(ii)** \$45.00 if the officer physically attends the meeting for less than four hours or the officer attends a virtual meeting of any duration during a single calendar day; or

**(iii)** per diem rates in accordance with Subsection B of this section, provided that the board or commission meeting is held outside of the municipal boundaries.

**(2) Other official meetings:** Non-salaried public officers may receive per diem rates for travel on official business that does not constitute a board, advisory board, committee or commission meeting only in accordance with Subsection B of this section.

**(3) Members serving in dual capacities:** Non-salaried public officers who also serve as public officers or employees of state agencies or local public bodies may receive mileage or per diem rates from only one public entity for any travel or meeting attended. Furthermore, non-salaried public officers who are also public officers or employees may not receive per diem rates for attending meetings held in the place of their home or at their designated posts of duty unless they are on leave from their positions as public officers or employees. Local public bodies may adopt regulations with respect to the receipt of per diem rates by employees or officers of local public bodies who also serve on boards or commissions subject to this rule.

**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 the ~~[annual approval of the secretary]~~ secretary's annual approval and must not exceed the rates set by the department of finance and administration.

**G. Travel for educational purposes:** A public officer or employee shall not be reimbursed for more than 30 calendar days of per diem in any fiscal year for attending educational or training programs unless approval has been obtained from the secretary.

**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.

**I. Illness or emergency:** Agency heads may grant permission, in writing, to pay per diem rates and travel reimbursement to an employee or public officer who becomes ill or is notified of a family emergency while traveling on official business and must either remain away from home or discontinue the official business to return home.

[2.42.2.8 NMAC - Rp, 2.42.2.8 NMAC, 01/16/2024; A, x/x/2025]

#### **2.42.2.9 REIMBURSEMENT OF ACTUAL EXPENSES IN LIEU OF PER DIEM RATES:**

**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 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. [2.42.2.9 NMAC - Rp, 2.42.2.9 NMAC, 01/16/2024; A, x/x/2025]

**2.42.2.12 REIMBURSEMENT FOR OTHER EXPENSES:** Public officers and employees may be reimbursed for certain actual expenses in addition to per diem rates.

**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.

**B. Local public bodies:** Local public bodies may adopt regulations governing the reimbursement of actual expenses incurred in addition to per diem rates and mileage.

[2.42.2.12 NMAC - Rp, 2.42.2.12 NMAC 01/16/2024; A, x/x/2025]