

NOTICE OF PROPOSED RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Department of Finance and Administration (DFA) hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes amending sections 5, 7, 8, 9, 11 and 12 of existing rule 2.42.2 NMAC - REGULATIONS GOVERNING THE PER DIEM AND MILEAGE ACT by a repeal and replacement of the entire rule, pursuant to Subsection C of 1.24.11.9 NMAC. By publishing this notice, the DFA resolves to undertake the rulemaking in conformity with the Per Diem and Mileage Act, Sections 10-8-1 to -8 NMSA 1978 (1953, as amended through 2021), the State Rules Act, Sections 14-4-1 to -11 NMSA 1978 (1967, as amended through 2017), and the Default Procedural Rule for Rulemaking, 1.24.25 NMAC (4/10/2018).

Purpose of Proposed Rule Amendments. The purposes of the amendment of existing sections of the rule is to: (1) enhance clarity by providing additional definitions, (2) increase the flexibility of the DFA to change per diem amounts and reimbursements in lieu of per diem paid to public officers and employees to be in alignment with current prices, (3) provide updated per diem payments for meetings attended by nonsalaried public officials, (4) increase mileage reimbursements to public officers and employees to match the Internal Revenue Service standard mileage rate, and (5) to provide increased reimbursements for certain actual expenses paid by public officers and employees.

Summary of Proposed Rule Amendments. The following sections of existing rule 2.42.2 NMAC are amended as follows:

Section 5 is amended to reflect the effective date of the proposed amendments.

Section 7 is amended to include definitions for the terms “attend,” “occasionally and irregularly,” and “normal work day,” and to expand the definitions of “Home” to mean the area within a 50-mile radius of the place of legal residence, instead of a 35-mile radius, and “Travel” to mean at least 50 miles from the designated post of duty of the public officer or employee, instead of 35 miles.

Section 8 is amended to (1) replace the existing specific dollar amounts for per diem rates depending on hours travelled beyond the normal work day and the areas of travel to overnight with rates published on the DFA website on May 1st for the preceding fiscal year, (2) provide that nonsalaried public officers can receive \$95.00 for physically attending a meeting for four or more hours in a day or \$45.00 for physically attending a meeting for less than four hours in a day or virtually attending a meeting, instead of providing \$95.00 per meeting day for any duration, and (3) expand the state special area to encompass Santa Fe County.

Section 9 is amended to replace the existing specific dollar amounts for the reimbursement of actual expenses in lieu of per diem rates with rates published on the DFA website on May 1st for the preceding fiscal year.

Section 11 is amended to change the mileage reimbursement from 80% to 100% of the Internal Revenue Service standard mileage rate for privately owned vehicles.

Section 12 is amended to provide that state officers and employee may receive full reimbursement for taxi or transportation fares incurred at the destination, allowed gratuities, not to exceed 20% per transaction, and parking fees, provided that receipts for such expenses are attached to the reimbursement voucher. The existing rule limits such reimbursements to \$6.00 per day or \$30.00 per trip and does not require that receipts be provided. Section 12 is also amended to remove the reference to Appendix B. The amendment deletes Appendix B which is a sample affidavit for lost receipts.

Statutory Authority. The DFA is authorized to promulgate rules and regulations to carry out the duties of the DFA and its divisions by Subsection E of Section 9-6-5 NMSA 1978 (1977). More specifically, the DFA is authorized to promulgate rules to implement the Per Diem and Mileage Act, Sections 10-8-1 to -8 NMSA 1978 (1953, as amended through 2021) by Section 10-8-5 NMSA 1978 (1953, as amended through 2018).

Technical Information that Served as a Basis for the Amendments. IRS Local Travel Guide, 1.32.1.8 (10-21-2023) Per Diem Expenses for Local Travel, accessible at https://irs.gov/irm/part1/irm_01-032-001. The full text of this Technical Information can also be obtained in the same manner as the full text of the proposed rule, as specified below.

Access to Full Text of Proposed Rule. The full text of the proposed rule may be obtained by contacting Mark Melhoff, Acting State Controller, Financial Control Division, Department of Finance & Administration, 407 Galisteo Street, Santa Fe, NM 87501, (505) 827-3625, to request a copy of the rule. The full text and this notice are also available on DFA's website: <https://www.nmdfa.state.nm.us/> and at DFA's Financial Control Division office located at 407 Galisteo Street, Santa Fe, NM 87501.

Public Comment. A person may submit, by mail or electronic form, written comments on the proposed rule through the end of the public comment period, which ends [December 21, 2023]. Written comments should be submitted to Mark Melhoff, Acting State Controller, Financial Control Division, Department of Finance & Administration, 407 Galisteo Street, Santa Fe, NM 87501. Written comments also will be accepted by email: MarkS.Melhoff@dfa.nm.gov, or by fax: (505) 827-4984. All written comments received by the agency will be posted on <https://www.nmdfa.state.nm.us/> no more than 3 business days following receipt to allow for public review. Written comments will also be available for public inspection at DFA's Financial Control Division office located at 407 Galisteo Street, Santa Fe, NM 87501.

Public Hearing. A public rule hearing on the proposed rule will be held before Albert J. Lama, Hearing Officer on December 21, 2023 from 9:30 a.m. at the Bataan Memorial Building (Conference Room), 407 Galisteo Street, Room 191, Santa Fe, NM 87501. Individuals may submit data, views or arguments orally or in writing to the proposed rule at the public rule hearing. Persons offering written comments at the hearing must have 2 copies for the hearing officer.

Any individual with a disability in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule in an accessible form may contact Acting State Controller Mark Melhoff (505-827-3625) at least 10 days before the hearing.