

Appendix A — DFA Rules

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This rule was filed as 2 NMAC 42.3

TITLE 2 PUBLIC FINANCE
CHAPTER 42 TRAVEL AND PER DIEM
PART 3 RELATING TO THE REIMBURSEMENT OF MOVING EXPENSES

2.42.3.1 ISSUING AGENCY: Department of Finance and Administration Bataan Memorial Building, Room 180 Santa Fe, New Mexico 87503
[5-15-97; Recompiled 10/01/01]

2.42.3.2 SCOPE: Governs the reimbursement of actual and reasonable moving expenses for all public officers and employees of state agencies, as defined by Section 10-8-3, NMSA 1978, other than state educational institutions designated in Article 12, Section 11, of the New Mexico Constitution.
[5-15-97; Recompiled 10/01/01]

2.42.3.3 STATUTORY AUTHORITY: Section 10-8-8 NMSA 1978 authorizes the department of finance and administration to promulgate by regulation reimbursement for the actual and reasonable moving expenses incurred by public officers and employees of state agencies.
[5-15-97; Recompiled 10/01/01]

2.42.3.4 DURATION: Permanent
[5-15-97; Recompiled 10/01/01]

2.42.3.5 EFFECTIVE DATE: May 15, 1997, unless a later date is cited at the end of a section or paragraph.
[5-15-97; Recompiled 10/01/01]

2.42.3.6 OBJECTIVE: To establish uniform rules relating to the reimbursement of actual and reasonable moving expenses incurred by public officers and employees of state agencies.
[5-15-97; Recompiled 10/01/01]

2.42.3.7 DEFINITIONS:

- A. "authorized mover" means a mover authorized by the state corporation commission or its successor agency to operate as a mover in the state of New Mexico.
- B. "authorized trailer rental firm" and "authorized truck rental firm" mean, respectively, a trailer rental firm or truck rental firm authorized by the state corporation commission or its successor agency to rent trucks and/or trailers to consumers in the state of New Mexico.
- C. "designated post of duty" means the location a public officer or employee is assigned to work by a state agency.
- D. "former residence" means a public officer's or employee's principal residence immediately before departure to a new designated post of duty;
- E. "may" means that an agency can, within its discretion, but is not obligated to, reimburse public officers or employees for any actual and reasonable moving expenses;
- F. "new residence" means the public officer's or employee's principal residence after assignment to a new designated post of duty and departure from a former designated post of duty;
- G. "state agency" means the state of New Mexico or any of its executive agencies, departments, boards, instrumentalities or institutions but shall not include state educational institutions set forth in Article 12, Section 11, of the New Mexico Constitution.
- H. "reimburse" means to make payment for actual and reasonable moving expenses:
 - (1) to a public officer or state employee, or;
 - (2) to an independent contractor who has provided moving services to a public officer or state employee provided that:
 - (a) a contract exists between the public officer or state employee and the independent contractor, and;
 - (b) The public officer or state employee would otherwise be entitled to reimbursement for the moving expenses.
- I. "manufactured home" means, as defined by the Motor Vehicle Code, Section 66-1-4.11 B. NMSA 1978, as amended, a moveable or portable housing structure that exceeds either a width of eight feet or a length of forty feet, constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy.

[5-15-97; Recompiled 10/01/01]

2.42.3.8 ACTUAL AND REASONABLE MOVING EXPENSES – ELIGIBILITY:

- A. A state agency may reimburse a public officer or employee for actual and reasonable moving expenses if all of the following conditions are met:
 - (1) the public officer or employee is assigned or transferred to a new designated post of duty for reasons clearly benefitting the state agency;
 - (2) the secretary of the department of finance and administration or his designee has approved in writing the payment of moving expenses pursuant to this rule;
 - (3) the assignment to the new designated post of duty will require the public officer or employee to commute at least thirty-five miles more from the former residence to the new designated post of duty than to the former designated post of duty;
 - (4) the reimbursement is limited to the actual and reasonable moving expenses allowed by this rule;
 - (5) the actual and reasonable moving expenses are incurred within six months after the date the transfer or reassignment becomes effective, and;
 - (6) the voucher submitted for reimbursement explains the reason for the transfer or reassignment.
- B. A state agency shall not reimburse a public officer or employee for the actual and reasonable moving expenses of any public

officer or employee who is not presently appointed, elected or in the employ of the state and being paid with public money at the time the moving expense is incurred.

C. The secretary of the department of finance and administration may approve actual and reasonable moving expenses for any public officer or employee who may not be eligible pursuant to paragraphs 8.1.2 [now Paragraph 2] through 8.1.5 of Section 8 [now Paragraph 5] of Subsection A of Section 2.42.3.8 NMAC] upon a written showing by the head of the state agency of unusual circumstances and that a hardship will result if reimbursement is not made. However, reimbursement shall not be made to a public officer or employee who is not eligible pursuant to sub-section 8.2 [now Subsection B of Section 2.42.3.8 NMAC] of this rule.
[5-15-97; Recompiled 10/01/01]

2.42.3.9 ACTUAL AND REASONABLE MOVING EXPENSES ALLOWED:

A. If a public officer or employee uses an authorized mover to move his or her household goods and personal effects from a former residence to a new residence, the public officer or employee may be reimbursed for the following actual and reasonable moving expenses:

- (1) the cost of packing the public officer's or employee's household goods and personal effects;
- (2) the cost of crating the public officer's or employee's household goods and personal effects;
- (3) the cost of any in-transit storage charges, not exceeding three months, of the public officer's or employee's household goods and personal effects;
- (4) the cost of insurance for loss or damage to the public officer's or employee's household goods and personal effects while in-transit from the public officer's or employee's former residence to the public officer's or employee's new residence; and
- (5) the cost of actual and reasonable household and personal effects moving expenses from the former residence to the new residence.

B. As used in paragraph 9.1.5 of this rule [now Paragraph 5 of Subsection A of Section 2.42.3.9 NMAC], "reasonable household and personal effects moving expenses" shall not include any expenses or other costs incurred in the packing, crating, storing, moving or insuring of the following items:

- (1) firewood;
- (2) building materials;
- (3) play sand;
- (4) explosives;
- (5) flammables, oily mops, rags, or acid;
- (6) boats;
- (7) animals, birds, or other live creatures;
- (8) potted plants or shrubbery;
- (9) automobiles, trucks, recreational vehicles and travel trailers, and
- (10) storage sheds.

C. If a public officer or employee does not use an authorized mover to move his household goods and personal effects from a former residence to a new residence, the public officer or employee may be reimbursed for:

- (1) the actual cost of renting a truck from an authorized truck rental firm to move his or her household goods and personal effects, and;
- (2) the actual cost of renting a trailer from an authorized trailer rental firm and one-way mileage for the use of a personal vehicle at the rate set forth in the Per Diem and Mileage Act and DFA rule 95-1 [now 2.42.2 NMAC], as amended, from the former residence to the new residence.

D. Vouchers submitted pursuant to this section must be accompanied by receipts for all money claimed, except for reimbursement for mileage.

E. The maximum amount of reimbursement and expenses for any eligible public officer or employee pursuant to Section 9 [2.42.3.9 NMAC] is limited to four thousand dollars (\$4,000) per move, subject to the following exception:

- (1) eligible public officers or employees may also be reimbursed for the actual and reasonable expense of moving a manufactured home if the following conditions are met:
 - (a) the manufactured home was the public officer or employee's former residence;
 - (b) the move is completed by an authorized mover.

[5-15-97, 9-15-00; Recompiled 10/01/01]

2.42.3.10 OTHER ACTUAL AND REASONABLE MOVING EXPENSES ALLOWED:

A. A public officer or employee who is eligible for reimbursement of actual and reasonable moving expenses pursuant to this rule may also be reimbursed for per diem and mileage at the rates prescribed by the Per Diem and Mileage Act and DFA rule 95-1 [now 2.42.2 NMAC], as amended, as follows:

- (1) for one round-trip not exceeding four days from the former residence to the general location of the new designated post of duty to look for a new residence, and;
- (2) for a one-way trip from the former residence to the new residence to move the public officer or employee and his or her household members from the former residence to the new residence unless reimbursed pursuant to Section 9.3 [now Subsection C of 2.42.3.9 NMAC].

B. Additionally, a public officer or employee may be reimbursed for actual lodging costs incurred for temporary quarters at a new designated post of duty for up to thirty (30) days with prior written approval of the head of the state agency. Under extraordinary circumstances, where temporary quarters do not include kitchen facilities, a daily allowance for food up to \$22.50 may be authorized.

C. Vouchers submitted for reimbursement pursuant to this section shall be:

- (1) certified as true and correct by the public officer or employee requesting reimbursement;
- (2) approved for payment and certified as true and correct by a public officer or employee of the reimbursing state agency designated to approve payment for the state agency.

[5-15-97; Recompiled 10/01/01]

2.42.3.11 MOVING EXPENSES NOT ALLOWED:

- A. A public officer or employee shall not be reimbursed for any of the following moving expenses:
- (1) taking down or installing draperies or mirrors attached to the wall;
 - (2) refitting rugs or draperies;
 - (3) assembling or disassembling outdoor gym sets or swing sets;
 - (4) disconnecting and servicing for moving major appliances such as dishwashers, refrigerators, washing machines, dryers, air conditioners, gas or electric ranges and television sets;
 - (5) insuring:
 - (a) any jewelry, money, trading stamps, bills, deeds, drafts or other valuable papers;
 - (b) any stamp or coin collections of inherent value;
 - (c) any precious metals;
 - (d) any valuable collectors items, or;
 - (e) silverware;
 - (6) losses sustained on the disposal of memberships in clubs, tuition fees, and similar items and,
 - (7) losses not covered by insurance.

[5-15-97; Recompiled 10/01/01]

2.42.3.12 MANUFACTURED HOME ACTUAL AND REASONABLE MOVING EXPENSES ALLOWED:

- A. A public officer or employee whose former residence is a manufactured home may be reimbursed for the following actual reasonable moving expenses incurred in moving the manufactured home from a former residence to a new residence by an authorized mover:
- (1) costs for moving a freezer;
 - (2) costs of packing household and personal effects;
 - (3) costs for removing and installing collapsible underpinning (skirting) and stairways and for reinstalling the skirting and stairways, provided no modifications are required;
 - (4) costs of unblocking and blocking;
 - (5) other costs incurred to prepare the manufactured home to be moved;
 - (6) escort fees;
 - (7) costs incurred in separating, boxing, and reconnecting;
 - (8) costs of moving the trailer by an authorized mover or mileage for personal vehicle at the rate set forth in the Per Diem and Mileage Act and DFA rule 95-1 [now 2.42.2 NMAC]; and
 - (9) reasonable costs of connecting or disconnecting utilities.

B. Payment shall be made only upon vouchers submitted with attached receipts for all money claimed.
[5-15-97; Recompiled 10/01/01]

2.42.3.13 MANUFACTURED HOME MOVING EXPENSES NOT ALLOWED:

- A. A public officer or employee will not be reimbursed for the following expenses or costs incurred in moving, from a former residence to a new residence, a manufactured home which was the employee's principal residence:
- (1) any costs set forth in sub-section 9.2 [now Subsection B of 2.42.3 NMAC] of this rule;
 - (2) storage sheds and any other items which are not part of the initial move of the manufactured home or the contents of the manufactured home;
 - (3) transportation of wood or concrete blocks;
 - (4) costs of moving fuel or butane tanks;
 - (5) costs of moving fencing or walkways;
 - (6) costs of moving non-collapsible underpinnings (skirting) and stairways;
 - (7) costs incurred for "acts of god" insurance or other extra insurance;
 - (8) costs of moving two connected manufactured homes (a "double wide" manufactured home) originally built and designed as two separate dwelling units;
 - (9) the dismantling, transporting or constructing of porches, patios or any add-on type of rooms other than tilt-out or slide rooms that were original components of the manufactured home and that were manufactured by the manufactured home company;
 - (10) the mounting or dismounting of wheels, tires, tongues, replacement and/or tire repairs.

[5-15-97; Recompiled 10/01/01]

2.42.3.14 REFUND OF REIMBURSEMENT: Any public officer or employee who voluntarily terminates employment with the state of New Mexico within six months after receipt of reimbursement pursuant to this rule for actual and reasonable moving expenses shall refund the amount of reimbursement to the state agency which paid the reimbursement, unless the termination was caused by the death or disability of the public officer or employee.

[5-15-97; Recompiled 10/01/01]

2.42.3.15 REIMBURSEMENT OF PUBLIC OFFICER'S OR EMPLOYEE'S SPOUSE: A public officer or employee shall not be reimbursed for moving expenses for which the spouse of the public officer or employee is reimbursed by the spouse's employer.

[5-15-97; Recompiled 10/01/01]

HISTORY OF 2.42.3 NMAC

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives under: Rule 78-10, Relating To The Reimbursement of Moving Expenses of State Employees, filed 11-15-78; Rule 78-10, Amendment No. 1, filed 6-28-84; Rule 78-10, Amendment No. 2, filed 12-20-89; DFA 78-10, Relating To The Reimbursement Of Moving Expenses Of State Employees, Emergency Amendment to Section 4E, filed 12-17-96.

History of Repealed Material

DFA/FCD Rule Number 84-2

Section 1. Authority

Sections 10-7-2 NMSA 1978 provides that State employees "shall receive their salaries or wages for services rendered in accordance with regulations issued by the Department of Finance and Administration," placing on the Department of Finance and Administration the responsibility for determining with discretionary payroll deductions may be permitted.

Section-6-5(E) NMSA 1978 permits the Department of finance and Administration to "*adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department.*"

Section 9-6-5(C) NMSA 1978 authorizes DFA/FCD to apply for and received funds form private companies to carry out its duties and services.

Section 2. Scope and Purpose

This rule governs the circumstances under which payroll deductions may be permitted and the method by which vendors, State employees or risk management may initiate requests for a payroll deduction code and by which the Department of Finance and Administration shall process those requests.

The purpose of this rule is to benefit State employee by providing payroll deduction codes for only those high quality employee benefit programs that the group buying power of the large number of State employees and the availability of payment by payroll deduction can obtain at substantial economic savings.

Section 3. Definitions

- a. "*open and switch enrollment period*" is an annual six-week period during which State employees may enroll in a specific qualified employee benefit program or may switch from enrollment in such a program offered by one qualified vendor to that offered by a different qualified vendor.
- b. "*payroll deduction code*" is a computer code under which a portion of a State employee's salary is automatically diverted from the employee to an account for the entity holding the code.
- c. "*qualified employee benefit program*" means a program offered by a qualified

vendor to State Employees (1) which requires a payroll deduction of a stable dollar amount (a change in price during an open and switch enrollment period is permitted) for an unlimited duration (subject to employee cancellation); (2) which offers employees a benefit not provided, or not provided in sufficient amount or with adequate specifications, by an existing, State-sponsored program; (3) which is determined by risk management to offer significant benefit for the cost; and (4) which offers a benefit to employees at substantive savings over what an individual employee could obtain without the benefit of the group-rate savings available through a payroll deduction plan.

- d. *"qualified vendor"* means a person or business entity (1) which offers a qualified employee benefit program; (2) which maintains 100 or more State employees enrolled in the program; (3) which is registered and in good standing with the requisite New Mexico business regulatory agency (e.g., the superintendent of insurance); (4) which has, and agrees to maintain, a physical and permanent commercial office and staff in New Mexico readily accessible to employees it is servicing, and (5) which is willing to abide by rules and regulations promulgated by the Department of Finance and Administration concerning the operation of payroll deduction plans.
- e. *"risk management"* means the Risk Management Division of the General Services Department.
- f. *"secretary"* means Secretary of Finance and Administration.

Section 4. Permitted Payroll Deductions

- A. Payroll deduction codes shall be allowed for the following purpose:
 - 1. Those required by law (State and Federal taxes, FICA).
 - 2. State-sponsored and required insurance programs where the State shares the cost of the program.
 - 3. PERA, ERB or other State-sponsored retirement programs mandated by statute.
 - 4. Deferred compensation programs under Chapter 10, Article 7A, NMSA 1978.
 - 5. Union dues as permitted by State Personnel Rules and Regulations.
 - 6. Credit unions approved by the Department of Finance and Administration.
 - 7. Charities approved by the Department of Finance and Administration.
 - 8. Qualified employee benefit programs approved by risk management.

- B. In order to pay for the ongoing administrative costs of administering payroll deductions for qualified employee benefit programs, the Department of Finance and Administration shall retain three percent (3%) from the total deductions made for each qualified employee benefit program under a payroll deduction code each pay period. In order to offset the costs to risk management of evaluating programs of vendors applying for payroll deduction codes, the Department of Finance and Administration shall charge an application fee of five hundred dollars (\$500) to each vendor proposing a program.
- C. Employee benefit programs which had payroll deduction codes prior to the adoption of this rule may not enroll additional State employees unless they fully comply with this rule.

Section 5. Procedure for Establishing Qualified Employee Benefit programs for Payroll Deduction Purposes

- A. A qualified employee benefit program may be initiated by three means:
 - 1. by vendor request
 - 2. by State employee request
 - 3. by risk management initiation
- B. Any vendor wishing to have an employee benefit program considered for implementation shall provide to risk management detailed specifications regarding the program, an application fee and any such additional information as may be requested by risk management.
- C. Any twenty-five (25) State employees may suggest to risk management an employee benefit program that they would like to see implemented.
- D. Risk management, upon request of a vendor, upon request of State employees or on its own initiative, shall investigate each proposed employee benefit program to determine:
 - 1. Whether such a program would offer a unique benefit to State employees not already adequately provided through existing employee benefit programs.
 - 2. Whether the program would provide significant benefit to State employees for the cost indicated.
 - 3. Whether the estimated cost to State employees for the program represents a substantial savings over what an individual State employee could obtain on his or her own without the benefit of the group rate obtained from providing a payroll deduction plan to the vendor.

4. Whether the program will require a deduction of a stable dollar amount (except for an annual price change) for a period of unlimited duration (subject to employee cancellation).
 5. For employee benefit, programs suggested by State employees or risk management, whether any qualified vendors (except for the minimum enrollment requirement) are available who are willing to provide the suggested services.
- E. In determining whether a proposed program meets the criteria for qualified employee benefit program set forth in Subsection D, above, the vendor shall supply a copy of its most recent audited financial statement, a companywide five-year loss experience report, if appropriate, illustrating premiums collected, claims paid and reserves allocated for each year of the five-year period for the type of policy coverage involved and any other information requested by risk management.
- F. If risk management determines that the suggested employee benefit program offers unique, quality benefits at substantial savings to employees, it shall conduct a survey of a representative sample of State employees to determine the extent of employee interest.
- G. If a minimum of seven hundred and fifty (750) employees are statistically determined to be interested in program and if the program meets the other criteria in this section, risk management shall certify the program as a qualified employee benefit program. Upon certification, the secretary shall direct the program's implementation as provided in Section

Section 6. Implementation of a Qualified Employee Benefit Program

Upon certification of a qualified employee benefit program, risk management shall implement the program in the following manner: Risk management shall draw up specifications for the qualified employee benefit program and publish notice of request of proposals through regular State bidding procedures. Upon receipt of proposals with application fees, risk management shall review each proposal, confirm that it meets the criteria and specifications for the qualified employee benefit program and that the vendor is a qualified vendor (except for the minimum enrollment qualifications). Risk management shall then select one or more qualified vendor. Risk management may either appoint the single vendor offering the program at the lowest price to be the exclusive vendor of that program under contract for up to three years, or may authorize several vendors offering the best versions of the program to solicit business from State employees during the open and switch enrollment period. If several vendors are authorized, risk management may require each vendor to cooperate in preparation of a comparison of benefits offered by the several vendors of the program.

If risk management contracts with an exclusive vendor, the contract shall be rebid by risk management at the end of the term. Risk management shall require as a condition of all bids that

any new vendor agree to take over automatically all State employees then enrolled in the program.

If risk management authorizes several vendors, those who enroll 100 or more State employees during open or switch enrollment periods shall receive a payroll deduction code. Employees who have enrolled in the program with a vendor who does not meet this minimum enrollment requirement so as to qualify for a payroll deduction code, shall have an immediate opportunity following the open and switch enrollment period which results in elimination of that vendor to switch enrollment to qualified vendor.

Each year thereafter, before the annual open and switch enrollment period, risk management shall review the programs, offered by all previously authorized qualified vendors to ensure that their programs continue to meet the criteria set forth in Section 5 (D) above, except the minimum employee enrollment requirement. Any additional vendor may submit a proposal with application fee to risk management at any time before the annual open and switch enrollment period for each program. Risk management shall determine whether the vendor is qualified and whether the proposal meets the standards for the qualified employee benefit program in question; risk management may authorize new qualified vendors to participate in the succeeding enrollment period. At the end of the open and switch enrollment period, any vendor which does not have the minimum enrollment requirement shall lose its payroll deduction code.

Section 7. Solicitation of State Employees by Vendors of Qualified Employee Benefit Programs

- A. Upon certification that a proposed program is a qualified employee benefit program as provided in Section 5 and upon selection of qualified vendors as provided in Section 6, risk management shall specify an annual open and switch enrollment period of six (6) weeks for that program.
- B. Vendors may prepare packets of information (fliers, brochures, etc.) for distribution to employees of each agency by the agency personnel officer. The information should specify how employees can contact vendors or their agents. When multiple vendors are soliciting State employees' business for any given employee benefit program, personnel officers should attempt, insofar as possible, to distribute information from all vendors at the same time during the first week of the open and switch enrollment period to facilitate the comparison of programs.
- C. Should an agency head deem appropriate, he or she may authorize a meeting of those employees of the agency who so desire with all of the vendors offering a qualified employee benefit program for an explanation of the programs and answering of questions. Agency heads are urged to hold these meetings during the lunch hour or other times which

will be non-disruptive of employees' working hours. Such authorization shall be in writing and addressed to each of the qualified vendors. Risk management shall be notified of these meetings and is encouraged and send knowledgeable representatives.

- D. Other than the meetings arranged in Subsection C above, vendors and their agents shall not be permitted to contact employees during working hours or at the place of employment.

Section 8. Termination of Programs

If the secretary determines at any time that any qualified employee benefit program places a burden on the Department of Finance and Administration and Risk Management which is not offset by a corresponding benefit to State employees, the secretary shall have the right to terminate all payroll deduction codes previously granted to vendors for that qualified employee benefit program under this Rule upon giving six (6) months written notice to each vendor. Qualified vendors and State employees shall not gain a vested right to use of payroll deduction codes.

A public hearing was held on DFA/FCD Rule 84-2 on the 5th day of December, 1984.

Rule 84-2 is approved be me this 4th day of May, 1984.

PLACE SIGNATURE LINE HERE.

TITLE 2 PUBLIC FINANCE
CHAPTER 42 TRAVEL AND PER DIEM
PART 2 REGULATIONS GOVERNING THE PER DIEM AND MILEAGE ACT

2.42.2.1 ISSUING AGENCY: Department of Finance and Administration.
[2.42.2.1 NMAC - N, 07/01/03]

2.42.2.2 SCOPE: In accordance with Section 10-8-1 to 10-8-8 NMSA 1978 (1995 Repl. Pamp.), 2.42.2 NMAC governs the payment of per diem rates and mileage and the reimbursement of expenses for all salaried and non-salaried public officers and employees of all state agencies and local public bodies, except:

- A. state legislators; and
- B. public officials and employees of state educational institutions specified in Article 12, Section 11 of the New Mexico Constitution and institutions defined in Chapter 21, Articles 13, 14, 16 and 17 NMSA 1978 (hereinafter “public postsecondary educational institutions”). If an official or employee of a public postsecondary educational institution is also a salaried or nonsalaried public officer or employee of any other state agency or local public body, these regulations shall apply when the person seeks payment of per diem rates and mileage or reimbursement of expenses in the capacity of a salaried or nonsalaried public officer or employee of a governmental entity other than a public postsecondary educational institution.

[2.42.2.2 NMAC - Rn, DFA Rule 95-1, Section 1.A, 07/01/03]

2.42.2.3 STATUTORY AUTHORITY: These regulations are promulgated pursuant to authority granted in Section 10-8-5(A) and Section 9-6-5(E) NMSA 1978.
[2.42.2.3 NMAC - Rn, DFA Rule 95-1, Section 1.B, 07/01/03]

2.42.2.4 DURATION: Permanent
[2.42.2.4 NMAC - N, 07/01/03]

2.42.2.5 EFFECTIVE DATE: November 30, 1995
[2.42.2.5 NMAC - N, 07/01/03]

2.42.2.6 OBJECTIVE: To govern the payment of per diem rates and mileage and the reimbursement of expenses for all salaried and non-salaried public officers and employees of all state agencies and local public bodies except those set forth in Subsections A and B of 2.42.2.2 NMAC.
[2.42.2.6 NMAC - N, 07/01/03]

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. “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.
- C. “Designated post of duty” means the address of a public officer’s or employee’s assignment as determined by the agency.
- D. “Employee” means any person who is in the employ of 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.
- E. “Governmental entity” means a New Mexico state agency or local public body within New Mexico.
- F. “Home” means:

(1) for per diem purposes, the area within a 35-mile radius of the place of legal residence as defined in Section 1-1-7 NMSA 1978 (1995 Repl. Pamp.);

(2) for mileage purposes, the place of legal residence as defined in Section 1-1-7 NMSA 1978 (1995 Repl. Pamp.). See appendix A for a copy of Section 1-1-7 NMSA 1978.

G. "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 or other districts, that receives or expends public money from whatever source derived.

H. "Nonsalaried 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.

I. "Out of state" means beyond the exterior boundaries of the state of New Mexico.

J. "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.

K. "Secretary" means the secretary of finance and administration.

L. "Travel" means: for per diem purposes, being on official business away from home as defined in Subsection F above and at least 35 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 and

M. "Travel voucher" means a payment voucher submitted for the purpose of claiming reimbursement for travel expenditures.

[2.42.2.7 NMAC - Rn, DFA Rule 95-1, Section 2, 07/01/03]

2.42.2.8 PER DIEM RATES 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 and/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. **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 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 follows:

(a) for less than 2 hours of travel beyond normal work day, none;

(b) for 2 hours, but less than 6 hours beyond the normal work day, \$12.00;

(c) for 6 six hours, but less than 12 hours beyond the normal work day, \$20.00;

(d) for 12 hours or more beyond the normal work day, \$30.00;

(e) "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 this subparagraph 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 this subparagraph 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.

(f) "Normal work day" means 8 hours within a nine-hour period for all public officers and employees both salaried and nonsalaried, regardless of the officers' or employees' regular work schedule.

(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 follows:

(a) in state areas \$85.00

(b) in state special areas \$135.00

(c) out of state areas \$115.00;

(d) 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. 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 follows:

- (a) for less than 2 hours, none;
- (b) for 2 hours, but less than 6 hours, \$12.00;
- (c) for 6 hours or more, but less than 12 hours, \$20.00;
- (d) for 12 hours or more, \$30.00.

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

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

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

(a) **State nonsalaried public officers:** Nonsalaried public officers of the state may elect to receive either:

- (i) \$95.00 per meeting day for attending each board or committee meeting; or
- (ii) per diem rates in accordance with Subsection B of this Section.

(b) **Local nonsalaried public officers:** Nonsalaried public officers of local public bodies may elect to receive either:

- (i) \$95.00 per meeting day for attending each board or committee meeting day; or
- (ii) 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 nonsalaried public officers:** Nonsalaried public officers of municipalities may elect to receive either:

- (i) \$95.00 per meeting day for attending each board or committee meeting; or
- (ii) 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:** Nonsalaried 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:** Nonsalaried 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, nonsalaried 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) **Nonroutine 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 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.

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.

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 - Rn, DFA Rule 95-1, Section 3, 07/01/03; A, 01/15/04]

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 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 this Section. Whenever possible, public officers and employees should stay in hotels which offer government rates. Agencies, public officers or employees who incur lodging expenses in excess of \$215.00 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 Section 10-8-4(K)(2) NMSA 1978 (1995 Repl. Pamp.) to a maximum of \$30.00 for in-state travel and \$45.00 for out-of-state travel for a 24-hour period.

(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. See Appendix B for a sample affidavit.

C. **Return from overnight travel:** On the last day of travel when overnight lodging is no longer required, partial day reimbursement shall be made. 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 follows:

- (1) for less than 2 hours, none;
- (2) for 2 hours but less than 6 hours, \$12.00;
- (3) for 6 hours or more, but less than 12 hours, \$20.00;
- (4) for 12 hours or more, \$30.00;
- (5) no reimbursement for actual expenses will be granted in lieu of partial day per diem rates.

[2.42.2.9 NMAC - Rn, DFA Rule 95-1, Section 4, 07/01/03; A, 01/15/04]

2.42.2.10 TRAVEL ADVANCES:

A. **Authorizations:** Upon written request accompanied by a travel voucher, agency heads and governing boards of local public bodies or their authorized designees may approve a public officer's or employee's request to be advanced up to 80 percent of per diem rates and mileage cost or for the actual cost of lodging and meals pursuant to 2.42.2.8 NMAC and 2.42.2.9 NMAC and for other travel expenses that may be reimbursed under 2.42.2.12 NMAC. Requests for travel advances shall not be submitted to the financial control division of the department of finance and administration more than two weeks prior to travel unless, by processing the request earlier, significant savings can be realized for travel by common carrier or for registration fees for seminars and conferences.

B. **Travel period:** A travel advance may be authorized either for a single trip or on a monthly basis for public officers and employees who travel continually throughout the month. Payment shall be made only upon vouchers submitted with attached authorization for each travel period.

- (1) **Single trip advances:** Where a travel advance is made for a single trip, the officer or employee

shall remit, within 5 working days of the return from the trip, a refund of any excess advance payment to the agency. The agency or local public body shall deposit the refund and reduce the disbursement recorded when the money was advanced.

(2) **Monthly advances:** Where monthly advances are made, employees shall remit to the agency, at the end of each month, any excess advance payments together with a thorough accounting of all travel advances and expenditures as required by the secretary. Where a travel advance is approved for the next month, the agency head may authorize the use of excess advance payments from the previous month as part of the advance for the next month in lieu of having the employee remit the excess funds.

C. **Agency records:** Each agency is responsible for maintaining records of travel advances authorized by the agency head or the agency head's authorized designee.

(1) **Employee ledgers:** Each state agency shall keep individual employee ledgers for travel advances. The ledger shall include the following information to provide an adequate audit trail:

- (a) employee
- (b) no.
- (c) division
- (d) fiscal year
- (e) date of travel advance
- (f) date of destination
- (g) per diem advance
- (h) earned
- (i) additional per diem or refund due

(2) **Year-end closing:** Each state agency shall review all travel advances prior to the end of the fiscal year and collect or pay all outstanding amounts if possible. Any receivables or payables outstanding at year-end must be recorded on the books and records of the agency.

D. **Local public bodies:** Local public bodies may grant prior written approval for travel advances as authorized by regulation of the governing body of the local public body.

[2.42.2.10 NMAC - Rn, DFA Rule 95-1, Section 5, 07/01/03]

2.42.2.11 MILEAGE-PRIVATE CONVEYANCE:

A. **Applicability:** Mileage accrued in the use of a private conveyance shall be paid only in accordance with the provisions of this Section.

B. **Rate:** Public officers and employees of state agencies shall be reimbursed for mileage accrued in the use of a private automobile or aircraft in the discharge of official duties as follows:

- (1) privately owned automobile, thirty two cents (\$0.32) per mile;
- (2) privately owned airplane, eighty-eight (\$0.88) per nautical mile.

C. **Local public bodies:** Public officers and employees of local public bodies may be reimbursed for mileage accrued in the use of a private conveyance in the discharge of official duties at the statutory rates unless such rates have been reduced by the governing bodies of the local public body pursuant to Section 10-8-5(D) NMSA 1978.

D. **Privately owned automobile:** For conveyance in the discharge of official duties by privately owned automobile, mileage accrued shall be reimbursed at the rate set forth in this section as follows:

(1) pursuant to the mileage chart of the official state map published by the state highway and transportation department for distances in New Mexico and the most recent edition of the Rand-McNally road atlas for distances outside of New Mexico; or

(2) pursuant to actual mileage if the beginning and ending odometer reading is certified as true and correct by the traveler; and

(a) the destination is not included on the official state map or on the Rand McNally road atlas, or,

(b) at the destination(s) of the public officer or employee, the public officer or employee was required to use the private conveyance in performance of official duties.

E. **Privately owned airplane:** Mileage accrued in the use of a privately owned airplane shall be reimbursed at the rate set forth in this Section as follows:

(1) pursuant to the New Mexico aeronautical chart published by the state highway and transportation department, aviation division, for distances in New Mexico and other states' air maps for distances outside of New Mexico; or

(2) pursuant to actual air mileage if certification is provided by the pilot, or a beginning and ending reading of actual mileage if the reading is certified as true and correct by the traveler, and the destination is not included on an air map.

F. **Reimbursement limit for out of state travel:** Total mileage reimbursement for out of state travel by privately owned automobile or privately owned airplane shall not exceed the total coach class commercial airfare that would have been reimbursed those traveling had they traveled by common carrier. This subsection shall not apply to a public school when transporting students.

G. **Additional mileage provision:** Mileage accrued while on official business shall be reimbursed for travel on official business. An agency head or designee may authorize by memorandum reimbursement for mileage from a point of origin farther from the destination than the designated post of duty in appropriate circumstances. The memorandum must accompany the payment voucher. If official business is transacted while commuting from home to post of duty or from post of duty to home, mileage shall not be paid for the number of miles between post of duty and home. Odometer readings showing additional miles accrued for official business must be provided to the agency for payment.

[2.42.2.11 NMAC - Rn, DFA Rule 95-1, Section 6 & A, 07/01/03]

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. **Receipts not required:** Public officers and employees may be reimbursed without receipts for the following expenses in an amount of \$6.00 per day not to exceed a total of \$30.00 per trip:

- (1) taxi or other transportation fares at the destination of the traveler;
- (2) gratuities as allowed by the agency head or designee; and
- (3) parking fees

(4) If more than \$6.00 per day or \$30.00 per trip is claimed, the entire amount of the reimbursement claim must be accompanied by receipts.

B. **Receipts required:** 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) actual costs for travel by common carrier, provided such travel is accomplished in the most economical manner practical;

(2) rental cars or charter aircraft, provided less expensive public transportation is not available or appropriate;

(3) 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

(4) professional fees or dues that are beneficial to the agency's operations or mission.

(5) 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. See Appendix B for a sample affidavit.

C. **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 - Rn, DFA Rule 95-1, Section 7, 07/01/03]

2.42.2.13 TRAVEL VOUCHERS: Travel vouchers and supporting schedules and documents shall conform to the policies and procedures manuals issued by the financial control division of the department of finance and administration.

[2.42.2.13 NMAC - Rn, DFA Rule 95-1, Section 8, 07/01/03]

2.42.2.14 EFFECTIVE DATES: All Sections shall be effective upon publication in the *New Mexico Register*.

[2.42.2.14 NMAC - Rn, DFA Rule 95-1, Section 9, 07/01/03]

APPENDIX A: 1-1-7 NMSA 1978, Residence; rules for determining.

APPENDIX B:

DEPARTMENT OF FINANCE AND ADMINISTRATION
 FINANCIAL CONTROL DIVISION
 AFFIDAVIT FOR LOST RECEIPTS
 Travel and Per Diem

I, _____ certify that actual receipts for expenses in the amount of
 (print name)
 \$ _____ incurred while in the conduct of business for the State of New Mexico, were lost.

Travel Dates	Lodging Expenses	Meal Expenses	Other Expenses

 Employee Signature

 Date

 Agency Head Signature

 Date

HISTORY OF 2.42.2 NMAC:

- Pre-NMAC History: The material in this Part was derived from that previously filed with the State Records Center:
 DFA 71-4 (Directive DFA 71-1) State Transportation Pool Rules and Regulations, filed 6/23/71
 DFA 72-5 Directive DFA 61-1, Transportation Pool Rules and Regulations, filed 6/30/72
 DFA 75-4 (Directive-DFA 63-4) State Transportation Pool Rules and Regulations, filed 3/3/75
 DFA 71-9 (Directive DFA 60-5C) Chapter 116, Laws of 1971, filed 6/30/71
 DFA 74-2 Per Diem and Mileage Act (Sections 5-10-1 through 5-10-4 NMSA 1953 as Amended) being Chapter 26, Laws of 1974, filed 5/6/74
 DFA 75-6 (Directive LGD 63-49) Out-of-State Travel, filed 5/6/75
 DFA 74-4 (Directive-DFA 62-3B) Procedures for In-State and Out-of-State Travel, Laws of 1974, Chapter 26, filed 5/7/74
 DFA 75-8* (Directive-DFA 63-6) Procedures for In-State and Out-of-State Travel, filed 6/10/75
 DFA 75-9* (Directive LGD 64-5) Per Diem and Mileage Act as amended, filed 8/7/75
 DFA 75-17* (Directive DFA 64-16) Expenses of Advisory Committees, Task Forces and other Bodies Appointed by State Agencies, filed 10/9/75
 DFA 78-3.1* (Rules 78-3) Relating to Reimbursement of Public Officers and Employees for Travel Expenses & Attending Meetings, filed 6/30/78
 DFA 81-3 (Rule 78-3) Related to the Reimbursement of Public Officers and Employees for Travel and Attending Meetings, filed 6/26/81
 DFA 82-2 (Rule 78-3) Related to the Reimbursement of Public Officers and Employees for Travel Expenses and Attending Meetings, filed 10/20/82
 DFA Rule No. 87-2 Related to the Reimbursement of Public Officers and Employees for Travel Expenses and for Attending Meetings; filed 9/30/87
 DFA Rule No. 90-2 Department of Finance and Administration, DFA 90-2, Governing Per Diem, Mileage and Other Reimbursements to Public Officers and Employees; filed 3/30/90

DFA Rule No. 92-1 Regulations Governing the Per Diem and Mileage Act; filed 10/7/92
DFA Rule 95-1 Regulations Governing the Per Diem and Mileage Act; filed 11/17/95.

History of Repealed Material: [RESERVED]