This Memorandum is intended to clarify state law (Per Diem and Mileage Act), and DFA regulations (NMAC 2.42.2.1, hereinafter referred to as Rule 95-1) governing the payment of $95.00 to non-salaried public officials for attending meetings. Following are guidelines that agencies should use when determining the propriety of such payments. We are issuing these guidelines because we have become aware of instances where public officials have claimed $95.00 for performing duties other than attending meetings of boards or commissions on which they are members. In order to receive the $95.00 stipend:

1. The official claiming the $95.00 must be non-salaried. Rule 95-1 discusses situations where a non-salaried public officer who is a board member also serves as an employee, or salaried public officer. They may not receive the $95 for attending meetings unless they are on leave from their other position. Salaried employees and salaried public officials who attend board or committee meetings are not entitled to receive the $95.00 stipend unless attendance at the meeting is not within the scope of their duties, and they must take leave (annual or without pay) from their job to attend the meeting. In other words, if an employee or official is required to attend a board or subcommittee meeting as part of their duties, they would not be entitled to the $95.00 stipend.

2. The official claiming the $95.00 must be a “Public Officer”, who is either elected or appointed to a board or commission, which includes advisory boards.

3. The official must have attended a board or commission meeting for which they are a member.

4. Officials may not claim the $95.00 for any other official business other than attending meetings of boards or subcommittees on which they are members. They may not claim the $95.00 for meeting with their constituents or other members of the public or for attendance at board, commission, council, or legislative meetings if they are not members of those bodies.

5. The board meeting must be properly convened, noticed, and minutes should be taken. However, the official is still entitled to receive the $95.00 even if a quorum is not present.

6. An official may not claim more than $95.00 per day, regardless of the number of meetings of different boards or subcommittees (on which they are members) they may have attended on that day.

7. Attendance at sub-committee meetings would qualify an official to receive the $95.00, so long as they are subcommittees which are properly designated by the entire board, or by the Chair, if that authority has been granted by the entire board; and so long as the official has been designated as a member of that subcommittee; and so long as the
subcommittee contains more than one member, since board members cannot meet with themselves alone. Officials cannot take it upon themselves as individual board members to designate themselves as “ad hoc” subcommittee members without official board action.

8. The official must elect to receive $95.00 per meeting day, or per diem as allowed by Rule 95-1 (either the rates or actuals). If the official elects to receive per diem under the rule, and not the $95.00, the official must have “traveled” (more than 35 miles from home or post of duty); “on official business” (as determined by the entire board, and not the member individually); and for the time period specified in the Rule (overnight or partial day per diem, if applicable).

9. There is no requirement that officials “travel” to attend meetings of their board in order to receive $95.00. They would receive that stipend even if their meeting is held within 35 miles of their home or post of duty.

10. The law presumes that attending a board or subcommittee meeting upon which an official is a member is “official business”. However, if officials perform other duties in their capacity as board members (which do not include attending meetings of their boards or subcommittees), and wish to be compensated for per diem, they must have “traveled” (35 miles from home or post of duty); on “official business” (as determined by the entire board prior to travel, and not the individual board member acting alone); and the travel must be for the minimum time specified by Rule 95-1 (usually overnight, but partial day per diem may be paid in some cases as provided by Rule 95-1). Those limitations would apply to travel to Santa Fe, including an overnight stay, in order to provide legislative testimony on behalf of your board or commission.

NOTE: If any board or commission encounters a situation that is not described in this memorandum, and there is a question as to reimbursable expense, please contact the DFA General Counsel (827-3639) or me (827-4985) for clarification.