




**FEMA**

July 26, 2004

MEMORANDUM FOR: Infrastructure Staff

FROM: Steven N. Glenn, Chief  
Infrastructure Branch 

SUBJECT: Regional Guidance # R4-RR-PA-07-26-04  
Reimbursement for Use of National Guard Aircraft

1. Purpose:

This guidance establishes criteria by which National Guard aircraft used in the performance of eligible work will be reimbursed.

2. Background:

44 CFR §206.228(a) provides for reimbursement of ownership and operational costs of force account (i.e., Applicant-owned) equipment used in the performance of eligible work, typically at rates published in the Federal Emergency Management Agency (FEMA) Schedule of Equipment Rates. These rates include depreciation, overhead, maintenance, field repairs, fuel, lubricants, tires, OSHA equipment and other costs incidental to operation. Aircraft rates are treated differently, based instead on a formula contained in an appendix to the Schedule of Equipment Rates that combines ownership and operational costs to derive an hourly reimbursement rate. While this may be a sound approach to estimating reasonable cost for applicant-owned aircraft, its application to the use of National Guard aircraft is problematic because National Guard aircraft are not "applicant-owned" equipment; rather, they are federally-owned assets issued to States' National Guard units for purposes related, among others, to their Federal or State military support mission. The Federal government calculates ownership and operational costs for all such equipment. Therefore, use of the Schedule of Equipment Rates to determine reimbursement rates under the Public Assistance Program for National Guard aircraft often fails to achieve parity with the federally calculated rates.

The States' Adjutant Generals have authority to use Federal property issued to the National Guard during periods of civil disturbance and other emergency conditions declared by the Governor in accordance with State law. This use is characterized as State Active Duty (SAD). In accordance with National Guard Regulation (NGR) 500-1, when Federal property is used by National Guard personnel in a SAD status, the State is liable for reimbursement (or replenishment in kind) to the Federal government through the United States Property and Fiscal Officer (USPFO) for: (1) repair parts, other than fair wear and tear, expended in the objective

area; (2) petroleum, oils and lubricants (POL) expended for direct mission accomplishment; and (3) incremental costs (those costs above the expenses which normally accrue during scheduled training periods) which can be attributed to direct mission support. Specific reimbursement policies and procedures for use of Army National Guard aircraft are outlined in National Guard Bureau (NGB) Pamphlet 95-5. Specific reimbursement policies and procedures for use of Air National Guard aircraft are outlined in Air Force Instruction (AFI) 65-503.

The hourly rate at which National Guard units must reimburse the Federal government for use of aircraft while in SAD status is defined as the "State Active Duty Emergency Rate." The State Active Duty Emergency Rate is calculated and published at least annually by the military departments and the National Guard Bureau in accordance with the Department of Defense (DoD) Financial Management Regulation (DoD 7000.14-R) for each type, model and series of DoD-owned aircraft used by the National Guard. DoD-calculated aircraft reimbursement rate schedules for fixed-wing aircraft and helicopters can be viewed at the Office of the Under Secretary of Defense (Comptroller) website at <http://www.dod.mil/comptroller/rates/>. Schedules showing the calculated State Active Duty Emergency Rate can be obtained from National Guard units' Plans, Operations, and Military Support Offices (POMSO) or other offices responsible for military assistance to civil authorities, or from the USPFO for respective states.

### 3. Guidance:

Pursuant to OMB Circular A-87, Attachment C.2, reasonableness of costs under the Public Assistance Program is achieved when it has been demonstrated that costs incurred are ordinary and necessary in the performance of eligible work and comply with the requirements of Federal, State and other laws and regulations. National Guard units are required by Federal regulation to reimburse the Federal government for the use of National Guard aircraft in SAD status at pre-determined reimbursement rates calculated annually by DoD and applied consistently to all National Guard units with flying missions. Therefore, National Guard aircraft used in the performance of eligible work resulting from an emergency or major disaster may be reimbursed on the basis of the State Active Duty Emergency Rate, except as provided below in Limitations.

### 4. Limitations:

A. NGB PAM 95-5, Chapter 4-2, distinguishes between SAD flying missions occurring in the lead-up to or immediate aftermath of an emergency or disaster (the "immediate response"), and flying missions performed for post-emergency clean-up or other operations in support of a state emergency mission (the "post-disaster" operations). The former distinction concerns SAD missions that do not require reimbursement to the Federal government for flying hours. The latter distinction concerns SAD missions performed following the Governor's issuance of an executive order declaring an emergency or disaster, which do require reimbursement to the Federal government at the State Active Duty Emergency Rate for flying hours. Therefore, hours flown during the immediate response period that do not create an obligation on the part of the National Guard to reimburse the Federal government (*i.e.*, no "out-of-pocket" expenses) will not be eligible for reimbursement under the Public Assistance program.

B. Regulations governing the use of National Guard aircraft in support of emergency operations while on SAD status allow for use not normally eligible for direct reimbursement under the Public Assistance Program, such as performing damage assessments or transporting government officials. These types of missions are not eligible for direct reimbursement but are instead covered by the Grantee or Subgrantee administrative allowance allowed as a percentage of the Federal share of Public Assistance funds actually awarded in the State or to the Applicant for the disaster. Therefore, flying hours submitted to FEMA for reimbursement should be carefully scrutinized to determine whether or not the flying hours were incurred in the performance of eligible work. Such a determination may be made by reviewing documentation such as mission logs, after-action reports, or other documents that show mission descriptions, mission date, aircraft type/model/series, aircraft tail number, hours flown, aircrew members, passenger manifests, or mission request records originating with State Emergency Management offices.

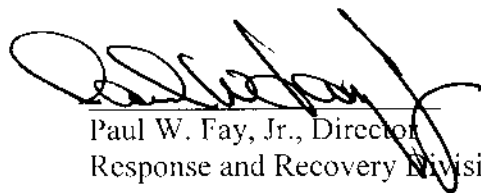
C. Reimbursement claims made outright for operational tempo fuel costs incurred by National Guard units that include costs related to fuel used in aircraft should be reduced by amounts equal to those which were provided for in the hourly reimbursement rate for eligible flying hours, to the extent that the same aircraft were reimbursed at the State Active Duty Emergency Rate.

D. Similar to the Applicant-owned equipment rates allowed under 44 CFR §206.228(a), the State Active Duty Emergency Rate includes the cost of fuel, based on a stabilized composite per gallon price calculated each fiscal year by DoD in its Operation and Maintenance budget justification materials. During disaster operations, mission exigencies may require the purchase of aircraft fuel from commercial sources at a higher cost than is provided for in the State Active Duty Emergency Rate. Under such circumstances, FEMA may pay the difference between the hourly fuel rate per gallon and the price per gallon of commercial fuel purchased to sustain flight operations when supported by actual documentation.

5. Effective Date:

This guidance will become effective on August 1, 2004.

Concurrence:

A handwritten signature in black ink, appearing to read "Paul W. Fay, Jr.", is written over a horizontal line. The signature is stylized and cursive.

Paul W. Fay, Jr., Director  
Response and Recovery Division