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Route To:

Subject: Forest Service Policy on Use of Standby Duty versus On-Call Status

To: Regional Foresters, Station Directors, Area Director, IITF Director, Deputy Chiefs and WO Staff

With the beginning of this year's fire season upon us, this memorandum reiterates the agency policy on the use of standby duty versus on-call status as outlined in our letter of September 20, 2005. Its purpose is to help supervisors properly differentiate employee's time spent in a "standby" status from "on-call" status for pay purposes.

When an employee is in "standby" status, the hours are considered hours of work and are compensable. If the employee is in "on-call" status, the hours are not considered hours of work and are not compensable. The regulations in Title 5 of the Code of Federal Regulations are the same for all employees, regardless of whether they are covered by, or exempt from, the Fair Labor Standards Act (FLSA). (Reference 5 CFR 551.431 for covered employees and 5 CFR 550.112(k) and (l) for exempt employees)

Time spent on standby duty for work-related reasons is compensable when the following conditions are met:

- Where an emergency already exists or is so imminent that the employee is involuntarily restricted by an official management order to a designated post of duty (i.e. fire incident base or station) and is in a state of readiness to perform work.
- Limitations on the employee's activities are so substantial that the employee cannot use the time effectively for his or her own purposes.

Time spent in on-call status is not compensable if either of the following two situations exists:

- The employee is allowed to leave a telephone number or carry an electronic device for the purpose of being contacted and required to remain within a reasonable call-back radius from their official duty location, but not required to be at a designated post of duty.
- The employee is allowed to make arrangements for another person to perform any work that may arise during the on-call period.

We currently have a number of positions, in Fire and Aviation Management as well as Information Solutions Organization, that require the employee to occasionally be placed in an on-call, non-paid status as a condition of their employment. As a result, it is imperative that management ensure these guidelines are followed when placing an employee in an on-call, non-paid status:

1. Supervisors will schedule an employee's on-call periods in advance of the season or at least quarterly, whenever possible. The supervisor will notify the affected employee in



writing of the specific time periods he or she will be on-call after regular work hours and on non-workdays. If management needs to change an on-call schedule to cover a specific situation, they will notify the employee in writing of the reason for the change and length of time it will be in effect.

2. The specific times that the employee will be on-call will be reasonable. In general, each on-call period should not exceed 1-2 weeks in duration. An on-call period may not cover the entire fire season.
3. These assignments should be done on a rotational basis, and a backup employee or crew should be designated in case of an emergency absence or hardship of the assigned employee. A designated backup may include the employee's supervisor.
4. It will be stipulated in advance as to how long the employee will have to respond by the type of emergency. In general, employees should be given a minimum of one hour to report for duty while in on-call status.

When these management prerequisites are met, employees in an on-call status can be held accountable and subject to disciplinary action for failing to report to work, unless there is a justifiable reason.

The fact that an employee is subject to restrictions necessary to ensure that the employee will be able to perform his or her duties and responsibilities, such as restrictions on alcohol consumption or use of certain medications, cannot be the basis for determining that the employee's activities are substantially limited.

This guidance is intended for managers and supervisors. We are aware that the NFFE Union has a much more liberal interpretation of when "standby" pay is warranted. However, in a recent arbitration the Forest Service's position was upheld.

In closing, supervisors are reminded that employees who voluntarily restrict their activities and/or use electronic communication devices to be available for duty after work hours are not on standby duty or on-call status. Likewise, time spent at an individual's personal residence preparing to depart on a fire assignment or other emergency assignment is not compensable.

If you have any questions, please contact Debbie Rigden for pay questions at (703) 605-0822 or drigden@fs.fed.us and contact Jim Hasbrouck for labor management questions at (703) 605-0863 or jhasbrouck@fs.fed.us.

/s/ Kathleen D. Burgers
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