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**Date:** February 7, 2007

**Subject:** OGC Opinion Regarding the Status of Personnel Hired under the Pay Plan for Emergency Workers

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

In response to questions from the Forest Service, the USDA Office of the General Counsel (OGC) issued an opinion on December 20, 2005, regarding the status of personnel hired under the Pay Plan for Emergency Workers (AD Pay Plan). The purpose of this memorandum is to widely disseminate the information we received from OGC.

We asked OGC whether or not personnel hired under the AD Pay Plan are considered Federal employees. OGC has advised us that AD hires do meet the definition of employee under 5 U.S.C 2105(a) because they are 1) appointed in the civil service by an employee of the Federal Government; 2) engaged in the performance of a Federal function; and 3) subject to the supervision of an employee of the Federal Government while engaged in the performance of their duties. AD hires are, however, exempt from some regulations which apply to other Federal employees. In summary:

- Personnel hired under the AD Pay Plan may perform work considered inherently governmental in nature.
- AD hires are covered under the Federal Employee Compensation Act (FECA), however, it is up to the Department of Labor (who administers FECA) to determine specific coverage on a case-by-case basis.
- AD hires are covered under the Federal Tort Claims Act (FTCA), the Military Personnel and Civilian Employees Claims Act (MPCEC) and Section 717 of Title VII of the Civil Rights act of 1964, 42 U.S.C.
- Individuals hired under the AD Pay Plan may not work as AD hires and simultaneously have contracts or Emergency Equipment Rental Agreements for emergency equipment or services with the government. See Federal Acquisition Regulation (FAR), subpart 3.601.
- AD hires are excluded from Social Security (FICA) withholdings under 26 USC 3121 (b)(6)(c).

For more information, please refer to the current Pay Plan for Emergency Workers or contact your servicing Human Capital Management office.

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