



National Federation of Federal Employees

Affiliated with the International Association of Machinists and Aerospace Workers

Forest Service Council Legislative Committee



We work for America every day

Forest Service Responders at Risk: Homeland Security Threatened

Forest Service (FS) and Department of Interior (DOI) incident teams play a key role in homeland security, responding not just to wildfires but to a wide variety of emergency incidents:

- In 2005, 12,000 trained responders assisted with hurricane recovery efforts
- In 2003, incident teams worked with USDA APHIS on Newcastle Disease outbreaks and with NASA on Columbia Shuttle recovery efforts
- In 2001, five FS incident teams were **in place and operational** in New York City and at the Pentagon **the morning after** the 9/11 attacks

Whereas FEMA and other agencies are just beginning to learn how to use the Incident Command System (ICS) to deploy functional teams—one of the major contributing factors to FEMA's failures post-Katrina was a lack of ICS expertise—the FS led the way in **inventing** ICS and has been using it for **decades**. An effective response requires more than ICS organizational charts on paper—it requires a trained and experienced workforce. Most of this expertise currently resides in the FS and its sister DOI agencies.

This human capital is more important than ever. Wildfire activity is trending upward. In 2006, the nation was at National Preparedness Level 5 for **two months**, meaning that major incidents were ongoing in several regions, each of which had the potential to **exhaust all agency fire resources**. Western states were poised on the brink of fiery disaster and the entire nation put at risk by this depletion of limited resources. The risk level will only increase as the scarce and critical human capital of the FS and DOI continues to be eroded by misguided policy and unintended consequences.

Misguided Policy: Outsourcing Homeland Security

Many ICS positions are staffed on a voluntary and collateral basis by FS employees—the FS militia. When not responding to incidents, these employees manage the land and serve the citizens who recreate on them. They are forestry technicians, biologists, forest planners, recreation technicians, etc. However, when the call comes, they assume specific ICS roles. These ICS positions, many of which require years of training and experience, are often completely unrelated to their normal duties.

Under the auspices of the administration's competitive sourcing initiative, the FS plans to study **two-thirds of its workforce** for possible outsourcing by the end of FY 2009. In FY 2007 alone, outsourcing "feasibility studies" affecting as many as **ten thousand employees** are either underway or scheduled. Most of these employees are members of the FS militia. Outsource the forest planner and you lose the ICS-qualified rapid responder as well. Unchecked, these plans will decimate the nation's emergency response capabilities.

Recommendation

This issue is among those being subjected to a comprehensive GAO review of the FS competitive sourcing program. We recommend a **funding moratorium on FS and DOI competitive sourcing** until this review is completed and an appropriate regulatory framework can be developed by Congress.

Unintended Consequences: Firefighters on Trial

PL 107-203 was recently enacted to require an independent investigation by the USDA Inspector General (IG) of any FS fatality by wildfire. The Congressional record conveys the purpose of an independent and unbiased investigation. The bill's author made it clear the statute was not intended to target the "inevitable mistakes" employees make in situations "which are so extraordinarily challenging to both the mind and the body." Rather, it was intended "to ensure **oversight and accountability in the Forest Service,**" which, in turn, was intended to ensure that "our federal agencies [take] meaningful actions to avoid [future deaths]." We applaud the goal of this statute. However, in the first investigation under its authority the USDA IG has acted in a way that has generated results diametrically opposed to this goal. On December 19, 2006, the IG's Special Agent elected to swear out a criminal complaint alleging a Crew Boss committed multiple counts of manslaughter by making errors in judgment in his official capacity on a wildfire.

This criminal prosecution has caused great concern among agency firefighters as well as cooperators and contractors. In an International Association of Wildland Fire survey of 3,362 firefighters, 36% said they would make themselves less available for incidents, 23% said they would not serve as an Incident Commander, 8% said they would retire or resign within a year, and 6% said they would no longer accept fire assignments. This stands to generate **staffing shortages** that will make those who still serve less safe. Further, the threat of prosecution is making employees less willing to candidly participate in agency Safety Investigations and After Action Reviews, thus **hampering agency efforts to learn from mistakes and improve safety and effectiveness.** While we agree that oversight of these self-investigations is warranted, it is clear that statutory adjustments are required to achieve the desired effect of agency accountability.

Recommendation 1

With the fire season looming, immediate action is required. Current law (PL 104-208, Sec. 636 as amended by PL 106-58, Sec. 642) mandates that agencies fund half the costs incurred by Law Enforcement Officers and management officials for **liability insurance.** We recommend this statute be amended effective upon enactment of FY 2008 appropriations legislation to include firefighters in this program (this program was enacted and has already been amended by appropriations legislation). Because of pay disparity issues, a more equitable long-term solution would be for the agency to assume the entire cost for employees below a specified grade level.

Recommendation 2

To ensure candid communications in agency Safety and IG oversight investigations while affording firefighters their Constitutional rights, we recommend enactment of legislation to designate the **record and opinions developed by these investigations be privileged;** that is, that they may not be considered as evidence in a civil or criminal proceeding arising from the incident. There is precedent in such an approach; it is recognized for safety investigations of aircraft accidents under 10 USC § 2254. Privilege would not preclude occurrence of an independent criminal investigation, it would merely preserve firefighters' rights. Wildland firefighters work 16-hour days performing physically and mentally demanding tasks under extreme, dangerous, and chaotic conditions. We believe these brave men and women—if we cannot call them heroes then there is no valid usage for this term—deserve the same due process protections under our Constitution afforded a thug who knocks over a liquor store.

Congressional Briefing, May 1, 2007. For more information, contact Mark Davis, Chair, NFFE Forest Service Council Legislative Committee, at 608-231-9474 or mwdavis01@fs.fed.us. More information on these issues is available on our website at <http://www.nffe-fsc.org> under "New Comp Sourcing."