

Chapter - 17

Public Law 93-638 Tribal Wildland Fire Management Programs

A. Introduction

The 1975 Indian Self-Determination and Education Assistance Act, *Public Law 93-638*, gave American Indians, Indian tribes, and Alaskan Natives the authority to contract with the Federal government to operate programs serving their Tribal members and other eligible persons. The law and related amendments provide an opportunity for the Tribes and Alaskan Natives to contract services, functions or activities administered by Department of the Interior that are not considered to be inherently federal activities. The Bureau of Indian Affairs (the Bureau) has developed guidelines to be used when negotiating annual funding agreements with Awarding Officials and/or the Office of Self-Governance when developing P.L. 93-638 Self-Determination Contracts with Tribes and Alaskan Natives who have or wish to contract the Wildland Fire Management (WFM) programs.

B. Fire Management Administration

Information in these guidelines is intended for use when negotiating annual funding agreements with Tribes and Alaskan Natives.

1. Guiding Principles

- a. Tribal and Alaskan Native WFM programs will be held to standards no more stringent than Bureau fire management programs. Both Bureau and Tribal Programs will strive to achieve excellence.
- b. Tribal and Bureau WFM programs will receive equal consideration for available funding and resources.
- c. The Bureau is committed to working with Tribes and Alaskan Natives to ensure the success not only for their WFM programs, but all WFM programs.
- d. Tribes and Alaskan Natives desiring to contract National, Regional or multi-Tribe Agency fire program functions or services provided by Bureau employees to benefit more than one Tribe must have a plan to provide comparable functionality or services and the agreement of other affected Tribes.

2. Inherently Federal Activities

- a. Hiring, firing and paying Federal employees including emergency firefighters (EFF), Administrative Pay Team (APT), or Administrative Disbursing Officer (ADO) functions or actions [This need to be reviewed as currently the Bureau contracts this function to the Conferred Tribes of Colville and Yakima. Suggest that Gail Schultz be contacted for authority to contract which should be sited in the document]. However, Tribes may designate a Tribal Official to sign as Time Officer on the EFF Time sheet (OF-288) when such Tribal Officials are designated in a Memorandum of Agreement or Understanding or Contract Scope of Work Statements between the Tribe and the Bureau, when the OF-288s are to be paid by an APT [This section needs to be rewritten by Bobbe or Bodie. The Bureau no longer has APT, can the Casual Payment Center just be inserted, I think not. It needs a good review.].
- b. Approval, consolidation and submission of budget requests.
- c. Obligating Federal government funds [Obligating Definition should be added here. Obligation does not mean physically in the Financial system. This can be verbal].
- d. Approval of Resource Management or Land Use Plans, Fire Management Plans (FMPs), Fire Management Program Analysis (FMPA) documents, NEPA documents, Wildland Fire Situation Analyses (WFSA) documents, Burned Area Emergency Stabilization (BAER)/Rehabilitation Plans. To fulfill its Trust responsibility in resource protection, The Bureau must approve the documents in the preceding sentence. Even though Tribal approval of the foregoing documents cannot be in lieu of Bureau approval, it is strongly recommended that Tribes be included in the document review process, be provided the opportunity to document concerns they may have for the record and be afforded the opportunity for joint approval.
- e. Delegation of Authority (DOA) to Incident Management and BAER/Rehabilitation Teams operating on reservations. It is required that the Bureau approve a DOA to such teams and is strongly recommended that DOA documents also be approved by the Tribe.

3. Wildland Fire Mangement Appropriation

a. Preparedness Sub-Activity

- 1) Readiness sub-activity (92120 program code) - includes all activities related to being prepared to suppress fires (e.g. work force staffing costs, training, equipment and supplies, etc.)
 - Use of the FMPA system is required to develop budget requests for preparedness or readiness funds. This system uniformly and objectively identifies the Normal Year Readiness and Performance Capability base funding for locations with fire programs. Hot Shot or Type I Crew Programs will be included in the Normal Year Readiness and Performance Capability base funding for Tribes whose crews are fully qualified and are functioning according to the interagency Type I Crew standards. Indirect costs will be paid on such Type I Crew Programs. The analysis will take Tribal fire management objectives into consideration.
 - Congress appropriates the preparedness or readiness budget based on the Normal Year Readiness and Performance Capability or a percentage of the Normal Year Readiness and Performance Capability.
 - Tribal fire programs will be budgeted at the percentage of the Normal Year Readiness and Performance Capability appropriated for a given fiscal year.
 - Tribes are eligible for available Tribal shares.
 - Tribes are eligible for indirect costs from the wildland fire appropriation.
 - The Normal Year Readiness and Performance Capability funding, tribal shares, and indirect costs may be included in Self-Governance Annual Funding Agreements (AFA) and transferred to Self-Governance Tribes by the Office of Self Governance (OSG). In cases where Tribes have negotiated for Regional Directors to distribute funds directly to a self-governance compact, AFA funds may be transferred to Tribes by the Regional Office.
- 2) Non-recurring ("Non-Normal Year Readiness and Performance Capability") preparedness funding (e.g. subsidiary project funding) will be applied for annually and distributed to Tribes

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through BIA Regional Offices via cooperative agreements or contracts. These are project-based one-time transfers of funds. Indirect costs on non-recurring or "Non-Normal Year Readiness and Performance Capability" preparedness funds are not authorized, however reasonable administrative and over head costs incurred by Tribes in such projects may be authorized. Tribal and BIA programs will be given equal consideration for non-recurring preparedness funding.

b. Construction and Deferred Maintenance Sub-Activity

- 1) Construction and Deferred Maintenance sub-activity (92400 program Code) for all projects for construction of fire facilities valued at greater than \$10,000 must be included in the 5-year DOI Facilities Construction Plan and identified as part of the Wildland Fire Annual Budget Appropriation. Funding is obtained by Tribes through BIA Regional offices via cooperative agreements or contracts or through agreements with other Federal agencies to reimburse Tribes for facilities construction costs on a project-by-project basis. Indirect costs for facilities construction projects are not authorized.

c. Emergency Suppression Sub-Activity

- 1) Suppression (92310 program code) – includes all wildfire suppression activities.
 - Funding is obtained by Tribes through agreements established by BIA Regional offices or other Federal agencies to reimburse Tribes for fire costs on a fire-by-fire basis. Indirect costs for fire suppression are not authorized
 - Tribes and BIA may negotiate to establish an escrow account based on historical fire suppression costs. This is a one-time expense. The account will be reimbursed on a fire-by-fire basis. If a Tribe should retrocede or the BIA re-assumes suppression responsibilities the account will be reimbursed to BIA.
- 2) Emergency Stabilization (92320 program code) – includes all post fire burned area stabilization activities covered by approved emergency stabilization plans.
 - Funding is obtained by Tribes through agreements established by BIA Regional offices or other Federal agencies to reimburse Tribes for wildfire costs on a

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project by project basis. Indirect costs for emergency stabilization projects are not authorized, however reasonable administrative and overhead costs incurred by Tribes in such projects may be authorized within stabilization plans

- 3) Severity (92350 program code) - authority and funding for activities necessary to augment initial attack capability when abnormal fire conditions occur throughout a region resulting in the fire season starting earlier than normal, or exceeding average high fire danger ratings for prolonged periods.
 - Funding is obtained by Tribes through agreements established by BIA Regional offices or other Federal agencies to reimburse Tribes for severity costs incurred under an approved fire severity cost request. Indirect costs for severity funds are not authorized.

d. Hazardous Fuels Reduction, Non-WUI Sub-activity

- 1) Hazardous Fuels Reduction, Non – WUI (92630 program code) – includes costs associated with planning and the operational of hazardous natural fuel reduction projects and restoration of fire to the ecosystem through the use of prescribed fire except prescribed fire fuel treatment projects specifically planned to treat hazardous fuels adjacent to “high risk” wildland/urban interface communities.
 - Funding is obtained by Tribes through agreements established by BIA Regional offices or other Federal agencies to reimburse Tribes for wildfire costs on a project by project basis. Indirect costs for hazard fuel reduction, fire use projects and authorized fuels personnel costs are authorized and will be provided to Tribes through agreements established by Regional BIA offices or other federal agencies. Indirect costs funded from this sub-activity will be paid.
 - includes costs associated with planning and the operational implementation of mechanical treatment(s) except when such mechanical treatment projects are specifically planned to treat hazardous fuels adjacent to the “high risk” wildland/urban interface communities.

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- Funding is obtained by Tribes through agreements established by BIA Regional offices or other Federal agencies to reimburse Tribes for costs on a project-by-project basis. Indirect costs for hazard fuel reduction, fire use projects are authorized and will be provided to Tribes through agreements established by Regional BIA offices or other Federal agencies. Indirect costs for projects funded from this sub-activity will be paid.

e. Hazardous Fuels Reduction, Wildland Urban Interface Sub-activity

Hazardous Fuels Reduction, WUI (92370 program code) – includes costs associated with planning and the operational implementation of projects to treat fuels adjacent to “high risk” wildland/urban interface communities through mechanical means (thinning, brushing, herbicide, etc.) or prescribed fire.

- Funding is obtained by Tribes through agreements established by BIA Regional offices or other Federal agencies to reimburse tribes for costs on a project-by-project basis. Indirect costs for hazard fuel reduction, wildland urban interface projects and authorized fuels personnel staffing are authorized and will be provided to Tribes through agreements established by Regional BIA offices or other Federal agencies. Indirect costs for projects funded from this sub-activity will be paid.

f. Rural Fire Assistance Sub-Activity

Rural Fire Assistance (92R00 program code) - authority and funding assisting Rural Fire Departments (RFD) that have cooperative agreements with the BIA to provide wildfire suppression services on Trust Indian lands. Funding is for wildland fire fighting training, equipment, and supplies that increase the safety and effectiveness of RFD operations in the wildland.

- Funding may be applied for and, if a Tribe's RFD Assistance proposal is approved by BIA, will be distributed to Tribes through BIA Regional Offices via cooperative agreements or contracts. These are project-based one-time transfers of funds. Indirect costs for Rural Fire Assistance funding are not authorized.

g. Burned Area Rehabilitation Sub-activity

Burned Area Rehabilitation (92610 program code) – includes all post-fire burned area rehabilitation activities covered by approved rehabilitation plans.

- Funding is obtained by Tribes through agreements established by BIA Regional offices or other Federal agencies to reimburse Tribes for fire costs on a project-by-project basis. Indirect costs for rehabilitation projects are not authorized, however reasonable administrative and overhead costs incurred by Tribes in such projects may be authorized within stabilization/ rehabilitation plans.

4. Program Operational Standards

Unless waivers to the following standards are explicitly approved pursuant to self-governance in Annual Funding Agreements or in Self Determination Contracts, the following standards will apply to Tribal Fire Management Programs. In the case of Self-Governance Compacts, alternative standards may be approved by Regional Directors and, in the case of Self-Determination Contracts, alternative standards may be approved by Self-Determination Contracting Officers.

- a. Fire program personnel that will be assigned to wildland fire incidents must meet the National Wildland Fire Coordinating Group (NWCG) standards for the positions held and functions performed. Tribal Fire Management Officers are responsible for certifying Tribal program employee qualifications and maintaining records of their employee qualifications. They may use the Firefighter Qualifications/ Certification Component of the Incident Qualification and Certification System (IQCS) if they choose to do so, but are not required to use that system.
 - NWCG position standards are considered the "industry standard" in the United States wildland fire community and are essential for safe operations in the hazardous wildland fire environment. Failure to meet the standards will prohibit participation in off reservation fire activities and could put Tribal fire fighters at personal risk.
- b. Fire occurrence reports will be encoded to the Wildland Fire Management Information (WFMI) System within two weeks after a wildfire is declared out.
 - Obligating government funds is an inherently Federal activity and fire reports are an essential element in accounting for the obligation of Federal funds.

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- c. Placing resource orders for: Incident Management Teams to manage extended, large fire operations, APTs to pay firefighters or vendors used on incidents, or for BAER/Rehabilitation Teams requires the involvement of BIA.
 - All three actions require that BIA approve delegations of authority to teams, because they involve the commitment to obligate large amounts of Federal funds and/or involve operations critical to meeting the BIA Trust responsibility on Indian land.
- d. The *Interagency Incident Business Management Handbook* will be used as a guide for wildland fire management operations financial business.
 - Fire suppression operations require the obligation of large amounts of Federal funds and the *Interagency Incident Business Management Handbook* is the "industry standard" for the conduct of financial business by the wildland fire community. It provides fair and prudent business practice guidance to situations common to wildland fire project operations.
- e. Approved FMPs and documented compliance with environmental and cultural resource management laws must be complete to receive project funding for fuels treatment projects involving prescribed fire or mechanical treatments. The desired condition is to have a fire management plan that compliments an approved Integrated Resource Management Plan or Forest Management Plan.
 - Prescribed fire operations have potential for large liability and are critical to the BIA Trust responsibility on Indian land so quality program and project level implementation planning for its use is required.

5. Contract Support Funding [A.K.A. Indirect Cost Rates]

The BIA NIFC Budget Officer will work in coordination with the Department's National Business Center, Indirect Cost Section to get the most current applicable contract support rates for those tribes and Alaskan Native Consortiums who contract the program under *Public Law 93-638*. Once the annual WFM Appropriation Law is passed, the Budget Officer will process Contract Support Funding to the Office of Self Governance and to Regional Awarding Officials for their respective

Tribes and Alaskan Native Consortiums for Wildland Fire Preparednes, Wildland Fire Prevention, Interagency Hotshot Crews, Hazardous Fuels Reductions, Non-WUI and WUI programs.

6. Minimum Funding Agreement Provisions

The minimum topics that are recommended to be included in P.L. 93-638 self-determination contracts are as follows:

- a. Amount of Base Program Funding (Normal Year Readiness and Performance Capability).
- b. Estimated amount of Indirect Cost Funding with language subjecting the final amount to the process identified in the foregoing Indirect Cost Rates section.
- c. When applicable, the identity of fire program components or functions to be retained by BIA.
- d. When applicable, the identity of fire program tasks or functions to be performed by the Tribe.
- e. When applicable, the identity of any fire program operational standards waived by the tribe and the identity of the alternative standard to be used.