



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUN 25 2009

The Honorable William E. Reukauf
Acting Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, DC 20036

Dear Mr. Reukauf:

I am writing in response to your letter of January 22, 2009, to Secretary Ken Salazar concerning allegations that employees at the Mescalero Agency of the Bureau of Indian Affairs violated laws and regulations and created substantial and specific danger to public safety by engaging and receiving payment for firefighting activities.

The Bureau of Indian Affairs conducted an investigation from February to March 2009 to address the allegations. Subsequent to the BIA investigation, the Department of the Interior's Office of Inspector General (OIG) conducted an investigation. The OIG report of investigation confirmed the findings identified by the BIA, including the lack of firefighting certifications, manipulation of data and access controls to the Incident Qualification Certification System, improper hazard pay claims, and a general lack of record keeping. The OIG's report acknowledges that Indian Affairs has taken corrective actions to address the findings with the exception of the improper collection of \$3,778.05 in hazard pay by Mescalero Agency Fire Management Program (MAFMP) employees.

The BIA agrees that hazard pay benefits were improper but under 5 U.S.C. § 5584 does not plan to recoup the hazard pay for the following reasons: recouping the \$3,778.05 in pay would cost the Government more than the actual amount of pay received; the 13 employees receiving pay were ordered to respond to a fire and performed the work under hazardous conditions; and the firefighter's union potentially would protest the repayment since the firefighters worked under hazardous conditions. However, the BIA did removed two supervisors from their positions in the MAFMP.

If you have any questions, please contact Mr. Jerry Gidner, Director, Bureau of Indian Affairs, at (202) 208-5116.

Sincerely,

George T. Skibine
Acting Principal Deputy Assistant Secretary – Indian Affairs

Enclosures

BUREAU OF INDIAN AFFAIRS INVESTIGATION

This memorandum is in response to an Office of Special Counsel letter dated 22 January 2009, Subject: OSC File No. DI-09-0597. The letter requests a report be generated in the format that follows as to the allegations that employees at the Mescalero Agency violated a law, regulation or rule and created a substantial and specific danger to public safety by engaging in and receiving payment for firefighting activities for which they were not certified.

Requirements of 5 U.S.C. 1213(d)

1. *A summary of the information with respect to which the investigation was initiated.*

In May 2008, after suppression activities for the South Tularosa Fire were completed, it came to the attention of Mescalero Agency Superintendent Robert Lacapa that individuals on a type 2 crew had been actively involved in suppression activities on the fire but did not have a current "Red Card" indicating they were qualified to be deployed for fire suppression duties. This was a major safety violation and the superintendent began an investigation into the reasons why the violation had occurred. Subsequently to this discovery by the agency superintendent, an Inspector General complaint was received and in January 2009 a report from the Office of Special Counsel was received. Both requested responses.

2. *A description of the conduct of the investigation*

Mr. Lacapa, Mescalero Agency Superintendent, enlisted the assistance of the Southwest Regional Assistant Fire Management, John Morton to determine if the type 2 crew had been issued red cards indicating they were qualified to be deployed as a fire fighting crew. Mr. Morton, with the assistance of personnel from the National Interagency Fire Center, reviewed the qualifications of the crew members and all government employees who had been involved in the suppression of the South Tularosa Fire by checking the IQCS system which houses the individual qualification records for firefighters and the time sheets for the incident.

3. *A summary of any evidence obtained from the investigation*

Mr. Morton ascertained that the type 2 crew had indeed been deployed with out being qualified or issued a red card. He also discovered that at least ten agency employees who did not have current red cards had been paid hazardous duty pay and overtime for duties performed during the fire. The documents supporting these findings were assembled and provided to Mr. Lacapa. He also found that individuals had been encoded into the Incident Qualifications and Certifications

System (IQCS) as being qualified to be assigned to positions for which they were in reality not qualified for.

4. *Violations*

- A. Violations of the Incident Qualifications and Certifications System were found in that personnel had qualifications encoded into the system that they were not in fact qualified to perform. *Blue Book page 13-4 Paragraph 2.a. and Wildland and Prescribed Fire Qualifications System Guide page 35*
- B. Red cards were issued to personnel who were not qualified to receive them. *Blue Book page 14-4 paragraphs 2.a and 2.b. and Wildland and Prescribed Fire Qualifications System Guide page 35*
- C. Individuals claimed and were paid hazardous duty pay they were not eligible for. *Interagency Incident Business Management Handbook April 2004 page 23 paragraph 12.9-3 Criteria for Entitlement to Hazardous Pay Differential for Irregular and Intermittent Hazardous Duties and paragraph 12.9-4 Regulation*
- D. Safety standards were violated by sending unqualified personnel to suppress a fire.

The guidelines, regulations and policy documents that contain the guidance used to determine these violations are:

- (1) Wildland Fire and Aviation Program Management and Operations Guide(2008)
- (2) The National Wildfire Coordination Group (NWCG) Wildland Fire Qualification System Guide (PMS 310-1)
- (3) Federal Wildland Fire (Safety) Policy (December 1995 and revised 2001)
- (4) Interagency Wildland Firefighter Medical Standards Program Test Administrator's Guide for Work Capacity Tests

5. *A. Changes in agency rules, regulations and practices:*

One of Mr. Cervantes defenses in the charge that the IQCS encoding was fraudulent was that any number of personnel who had access to the system could have done the encoding and then just entered his name as the encoder. This was found to be true and the program is being reviewed in order to determine if a change needs to be made. That decision will be made by staff at the National Interagency Fire Center.

Program operation reviews were conducted by individuals who had been detailed into the Fire Management Officer position while Mr. Kirgan was pending removal and a review by the National Interagency Fire Center staff. Additionally, the National Interagency Fire Center conducted a national level review and made

recommendations to improve the program. These recommendations are currently being reviewed for implementation. Among the actions being implemented are:

1. Annual Operating Plan and Step Up Plan are established.
2. Standard Position Descriptions for all Fire employees are completed.
3. Personnel with access to the IQCS system have been limited to regional office personnel only until such time as new personnel are hired at the Mescalero Agency.
4. Reorganization of the Fire Management Section

To implement item 4 above, Mr. Walker requested a Deputy Director for fire operations from the National Interagency Fire Center in Boise, Idaho be detailed to the Mescalero Agency to examine the structure and funding levels of the Fire Program. The individual prepared a reorganization plan that upon adoption will enable the program to operate within the current budget constraints. The new organization chart is currently being prepared for Mr. Walker's signature.

B. The restoration of any aggrieved employee

Disciplinary action was proposed against two individuals, David Kirgan, Fire Management Officer for the Mescalero Agency and Cornel Cervantes, the supervisory Forestry Technician. The charges against the two employees are listed in Section C below.

Upon receipt of the proposals to remove them, David Kirgan and Cornel Cervantes met with the Mescalero Tribal Council to inform them of the proposed actions. David Kirgan's father, Ray Kirgan, is a retired BIA employee who was the Mescalero Agency Fire Management Officer prior to his retirement and was a member of the tribal council at the time. Alfred Lapaz, David Kirgan's cousin was also a member of the tribal council at the time. David Kirgan's uncle, Carleton Naiche-Palmer is the President of the Mescalero Apache Tribe and as such conducts the council meetings. This was a blatant attempt to use tribal political leaders to influence a Bureau of Indian Affairs personnel action.

As a result of the meeting held with the council, the council passed non binding resolutions to have three individuals removed from their positions at the Mescalero Agency: Bernard Ryan, Forest Manager and direct line supervisor for Mr. Kirgan; Robert Lacapa, Superintendent; and Christopher Little, Fuels Specialist. Mr. Little is also a member of the Mescalero Apache Tribe and resides on the reservation. The three individuals related to Mr. Kirgan did not recuse themselves from voting on the resolution.

Bernard Ryan, Mescalero Forest Manager, accepted a position with the Bureau of Land Management making the resolution for his removal a mute issue.

Mr. Walker requested that the Mescalero Tribal Council rescind the resolution against Christopher Little, Fuels Program Specialist for the Mescalero Agency. On April 13, 2009, Mr. Walker received a letter from Mescalero Tribal President Carelton Naiche-Palmer indicating that if Mr. Walker would return David Kirgan to his former post as the Fire Management Officer for the Mescalero Agency, the tribal council would rescind the resolution against Mr. Little.

Mr. Lacapa, Mescalero Agency Superintendent, was detailed to the Northern Pueblos Agency to be acting Superintendent pending approval by the Director, Bureau of Indian Affairs of his directed reassignment to the position of Superintendent, Southern Pueblos Agency. Mr. Walker met with the Mescalero Tribal Council and after lengthy discussions with the council made the determination that it was in the best interest of Mr. Lacapa and the Bureau of Indian Affairs to assign him to a new post.

C. *Disciplinary action against any employee*

When the investigation was completed, Mr. Lacapa made the decision to propose disciplinary action against the Fire Management Officer, David Kirgan, and the Fire Training Specialist, Cornel Cervantes, for improper management of the fire program. The charges were 1) Falsification and Misrepresentation of Official Government Records and 2) Failure to follow wildfire safety regulations.

The deciding official, Larry Morrin, Southwest Regional Director for the Bureau of Indian Affairs concurred with the proposal after receiving both oral and written responses from the two individuals. A draft letter for the removal of the two individuals was never finalized. Mr. Morrin was removed from his position in September 2008 and Mr. William Tandy Walker was detailed as the Acting Regional Director at that time. Mr. Walker reviewed the proposals and offered the two individuals the opportunity to make oral and written responses again so that he would be able to make an informed decision regarding the proposals.

After reviewing all the evidence and receiving reports from the Regional Staff, the BIA Employee Relations Officer and the Solicitors office, Mr. Walker decided a preponderance of the evidence was not sufficient to warrant a removal and rescinded the proposed actions and the two individuals were informed in writing on 3 December 2008 of that decision. On 12 December 2008, Mr. Walker issued written reprimands to Mr. Kirgan and Mr. Cervantes for the mismanagement of the fire program at the Mescalero Agency.

After reading the reviews conducted by individuals who had been detailed into the Fire Management Officer position while Kirgan was pending removal and a further review by the National Interagency Fire Center staff, Mr. Walker did not have confidence that the two individuals could satisfactorily resolve the issues found in the reviews or manage the program properly. Mr. Walker decided to reassign the two individuals to positions outside the Mescalero Agency. Mr. Kirgan was reassigned to the Zuni Agency as the fire management officer and Mr. Cervantes was reassigned to the regional office as a fire planner. Mr. Kirgan accepted his directed reassignment to the Zuni Agency. Mr. Cervantes chose to retire in lieu of accepting his reassignment.

D. The United States Department of the Interior Office of Inspector General (OIG) completed their investigation into the question of the violation of the safety regulations and the pay issue to determine if there is criminal liability on May 15, 2009. The OIG identified that the firefighters did lack the Red Card certifications and hazard pay was improperly paid. The OIG also identified that overtime was properly authorized and paid. The OIG did not identify any instances of fraud related to hazard or overtime pay.

Indian Affairs agrees that hazard pay was improper but under 5 U.S.C. § 5584 Indian Affairs does not plan to recoup the pay for the following reasons: recouping the \$3778.05 in pay would cost the government more than the actual amount of pay received, the 13 employees that received the pay were ordered to respond to the fire and performed the work under hazardous conditions, and potentially the firefighter's union would protest the repayment since the firefighters did work under hazardous condition. The Bureau of Indian Affairs also has removed the two supervisors from their positions in Fire Management at Mescalero Agency. The reassignment of Mr. Kirgan and the retirement of Mr. Cervantes, coupled with the vacancy created by the relocation of the Forest Manager creates the opportunity to rebuild the Fire Management program at the Mescalero Agency with totally new management staff. The new staff will implement the changes suggested by the program reviews and initiate the new organizational structure.



**United States Department of the Interior
Office of Inspector General**

REPORT OF INVESTIGATION

Case Title Unauthorized Charging of Overtime	Case Number OI-NM-09-0063-I
Reporting Office Albuquerque, NM	Report Date May 15, 2009
Report Subject Report of Investigation	

SYNOPSIS

We initiated this investigation in October 2008 after our office received an anonymous complaint alleging that Bureau of Indian Affairs (BIA) officials fraudulently authorized Mescalero Agency Fire Management Program (MAFMP) personnel to charge overtime, fire resources, and equipment to a fire suppression account between June 18, 2008 and September 30, 2008. The complainant further alleged that BIA officials falsified timesheets, weather records, and fire ratings to inappropriately justify the expenditure of \$500,000 in fire suppression funding.

In January 2009 we subsequently received a separate complaint from the U.S. Office of Special Counsel (OSC), through the Secretary of the Interior, alleging that a number of MAFMP personnel had inappropriately responded to the South Tularosa Fire in May 2008 when they were not Red Card certified. Additionally, it was alleged that MAFMP personnel inappropriately collected significant amounts of overtime and hazard pay, while responding to the fire, when they were not eligible to receive it.

In an attempt to substantiate whether MAFMP personnel had inappropriately responded to the South Tularosa Fire and collected overtime and hazard pay without being Red Card certified, we interviewed current and former BIA and National Interagency Fire Center (NIFC) officials. We also obtained and reviewed Incident Qualifications and Certification System (IQCS) records, BIA personnel actions, and MAFMP payroll records. Lastly, we examined a 2008 NIFC program review that reported on all aspects of MAFMP's fire programs, including Red Card certifications.

Our investigation identified 27 MAFMP personnel that had responded to the South Tularosa Fire even though they were not Red Card certified. Although we found that these individuals had collectively received more than \$30,314.27 in overtime compensation for their involvement in the fire, we found

Reporting Official/Title Arthur D. Willhite/ Resident Agent In Charge	Signature
Approving Official/Title Jack Rohmer/ Special Agent In Charge	Signature

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no evidence that the overtime charges were inappropriate. Additionally, our review of overtime pay regulations found no restrictions in the payment of overtime with regard to Red Card certifications. However, we found agency policy requiring Red Card certification for the payment of hazard pay. Through our cross reference of Red Card certifications with BIA payroll records, we identified 13 MAFMP employees that collectively received \$3,778.05 in hazard pay benefits for the South Tularosa Fire even though they lacked Red Card certification. Lastly, we determined that the Red Card certification issues at the Mescalero Agency were thoroughly investigated by NIFC and BIA officials in June 2008. Our investigation determined that BIA officials took appropriate action to correct Red Card certification issues to include restricting and limiting the MAFMP's response to fires, removing and reassigning the Fire Management Officer (FMO) and Assistant Fire Management Officer (AFMO), and bringing in Red Card certified detailers.

Although OSC's referral advised that it was their policy that the whistleblower in this matter be interviewed by the investigating agency (i.e. DOI-OIG), we could not interview the whistleblower since his or her identity was not disclosed to our office.

Since BIA management has taken appropriate corrective action in this matter and is aware of the issues involving the improper payment of hazard pay to MAFMP employees, no other investigative activity is warranted. However, our investigation of the alleged misuse of fire suppression funding at the Mescalero Agency remains under investigation and is still pending.

BACKGROUND

Red Card Certifications

We learned through our investigation that all wildland firefighters were required to meet specific medical, physical, and training standards in order to receive certification for firefighting. These standards, established by the National Wildfire Coordinating Group (NWCG), are required of all wildland firefighters regardless of their employment (i.e. federal, state, or local). Once wildland firefighters have completed all necessary requirements, they are issued a "Red Card" to signify their eligibility. Red Card certifications are only valid for one year and the re-certification process typically begins in January each year, prior to fire season.

We also learned that the standard requirements for Red Card certifications include an annual medical and physical screening test (i.e. Pack Test). Additionally, firefighters are required to attend an annual 8-hour refresher training course. More recently, drug testing has been incorporated into these standards. Federal employees are also required to meet driving standards and to pass a driving test every three years.

Incident Qualification Certification System

Through our investigation we learned that wildland firefighter training and experience, necessary to obtain Red Card certification, was maintained in a national database known as the Incident Qualification Certification System (IQCS). Delegated authority is granted to each agency (i.e. federal, state, and local) to maintain the database for wildland firefighters within their respective area.

We learned that there were four levels of access to the IQCS – 1) data entry access; 2) training instructor access; 3) local/regional account manager access, and 4) national account manager access.

The data entry level, typically given to secretarial or clerical personnel, limits and restricts IQCS access to mere data entry. The training instructor level of access permits training instructors to enter IQCS to set up training for firefighters. This level only allows for data entry and does not allow for data manipulation within IQCS. The local/regional account manager level of access, given to designated regional and agency managers, allows for overrides and the manipulation of data within the IQCS. The national account manager level of access, reserved for NIFC fire managers, provides the greatest amount of IQCS access. At this level, personnel are able to perform overrides, manipulate the data, and can see who has manipulated data or performed overrides at the local and regional levels. This level of access also allows NIFC personnel to see when local and regional personnel have logged in and out of the IQCS system.

South Tularosa Fire

According to information obtained from the Western Institute for Study of the Environment (WISE), the Southwest Coordination Center (SWCC), and other fire reporting sources, the South Tularosa Fire began on May 1, 2008, after embers from a religious cooking ceremony, escaped from a fire pit and ignited surrounding vegetation. High winds and dry conditions caused the fire to grow rapidly in an area 4 miles southeast of Mescalero, NM, on the Mescalero Apache Indian Reservation. The following provides a summary of firefighting activities, by date, to suppress the South Tularosa Fire:

On May 2, 2008, the fire was upgraded to a Type I fire after Red Flag wind and extreme dry fuel (i.e. trees, grass, and vegetation) conditions caused the fire to grow rapidly. As a result, a Type I fire team was brought in and assumed management of the fire. Air resources, including three on-call air tankers, two attack planes, and a helicopter were brought in to help suppress the fire.

On May 4, 2008, the fire was reported to be 35% contained with 315 firefighting personnel responding to the fire. The amount of burned area was reportedly 3,200 acres.

On May 5, 2008, the fire was 45% contained with 468 firefighting personnel responding to the fire. The fire behavior reportedly decreased due to higher fuel moistures and decreased wind. The amount of burned area was reported to be 3,860 acres.

On May 6, 2008, the fire was 65% contained with 500 firefighting personnel responding. The amount of burned area was still reported at 3,860 acres.

On May 7, 2008, the fire was 70% contained and was being transitioned to a Type III fire. Of the 461 firefighting personnel responding to the fire, only 140 firefighters were to remain to fight the fire. The amount of burned area was still reported at 3,860 acres.

On May 9, 2008, the fire was 80% contained and was still being transitioned to a Type III fire, with 321 firefighting personnel still on the ground. The amount of burned area was still reported to be 3,860 acres.

On May 14, 2008, the fire was reported to be 100% contained with 140 firefighting personnel responding to the fire. The final amount of burned area was 3,860 acres.

Relevant Regulations

We determined that the following Code of Federal Regulation (CFR) and agency policy was relevant to this investigation:

- Title 5 CFR, Sec. 550.111 – Authorization of overtime pay.
- Title 5 CFR, Sec. 550.904 – Authorization of hazard pay differential.
- BIA Wildland Fire and Aviation Program Management and Operations Guide (Blue Book), Chapter 13, Part 1 (a) provides that each agency will designate employees who will be responsible for ensuring that all incident experience, incident training, and Position Task Books (PTBs) for employees within the Agency or Tribe are accurately recorded in the IQCS. All records must be updated annually or modified as changes occur.
- BIA Wildland Fire and Aviation Program Management and Operations Guide (Blue Book), Chapter 13, Part 2 (a) provides that the Certifying Official (Agency Superintendent, Tribal Line Officer, or delegate) is responsible for certification of personnel serving as incident responders. Agency certification is issued annually in the form of an Incident Qualification Card (Red Card), which certifies that the individual is qualified to perform in a specified position(s). The Red Card must be reviewed for accuracy and signed by the certifying official. The Certifying Official and incident responder are responsible for monitoring medical status, fitness, training, and performance, and for taking appropriate action to ensure the employee meets all position performance requirements.
- BIA Wildland Fire and Aviation Program Management and Operations Guide (Blue Book), Chapter 13, Part 2 (b) provides that Red Cards generated by IQCS are required for all Bureau and Tribal employees assigned to wildfire, prescribed fire, wildland fire use, and all hazard incidents. This includes Administratively Determined (AD) – emergency firefighter (EFF) employees.
- Interagency Incident Business Management Handbook, 12.9-3 – Criteria for Entitlement to Hazardous Pay Deferential for Irregular and Intermittent Hazardous Duties, provides full-time, part-time, and intermittent GS employees are eligible for hazard pay differential computed at 25 percent of the base rate when performing duties specified below:
 1. Firefighting – participating as a member of a firefighting crew in fighting forest and range fires on the fire line before the fire is controlled. No personnel assigned to firefighting duties are entitled to hazard pay after the declaration of an official control time and date.
 2. Flying – individuals, except pilots, who are participating in limited control flights.
 3. Groundwork beneath hovering helicopter – participating in ground operations to attach an external load to a helicopter hovering just overhead.
 4. Work in rough and remote terrain – working on cliffs, narrow ledges, or near vertical mountainous slopes where a loss of footing would result in serious injury or death, or when working in areas where there is danger of rock falls or avalanches.

DETAILS OF INVESTIGATION

On October 23, 2008, we received an anonymous complaint alleging that between June 18, 2008, and September 31, 2008, reportedly a period of low fire risk, BIA officials fraudulently authorized Mescalero Agency Fire Management Program (MAFMP) personnel to charge overtime, fire resources, and equipment to the 92310 fire suppression account (**Attachment 1**). Additionally, the complainant alleged that BIA officials falsified timesheets, weather records, and fire ratings to inappropriately justify the expenditure of \$500,000 in 92310 fire suppression funding.

On January 26, 2009, we received a separate complaint from the U.S. Office of Special Counsel (OSC), through the Secretary of the Interior, alleging that MAFMP personnel may have violated a law, rule, or regulation and constituted a substantial and specific danger to public safety by engaging in and receiving payment for firefighting activities for which they were not certified (**Attachment 2**). The OSC referral identified the fire as being the South Tularosa Fire. The complaint further alleged that MAFMP personnel may have inappropriately collected significant amounts of overtime and hazard pay. OSC advised that the information in their referral had come from a DOI whistleblower who had requested anonymity.

Our investigative findings have been organized into two sections in this Report of Investigation. The first section addresses NIFC's investigation of Red Card certification issues at the Mescalero Agency and the corrective action taken by BIA officials. The second section examines whether overtime and hazard pay, collected by MAFMP personnel during the South Tularosa Fire, were appropriate.

Red Card Certification Issues

Our investigation of Red Card certification issues at the Mescalero Agency began with interviews of BIA and NIFC officials. Through the interviews, we learned that Red Card certification issues at the Mescalero Agency had been thoroughly investigated by NIFC and BIA fire management officials in June 2008. We also found that BIA officials had taken appropriate corrective action to remedy long standing Red Card certification issues at the MAFMP. Our interviews of BIA and NIFC officials revealed the following:

Interviews

John Waconda, Acting Superintendent, Mescalero Agency, Southwest Regional Office (SWRO), BIA, told us that following an early fire season at Mescalero in 2008, regional fire management officials began reviewing whether the MAFMP was prepared for the fire season (**Attachment 3**). Regional fire management officials discovered during their review of expenditures and timesheets that MAFMP firefighters had been dispatched to fires without Red Card certifications. Waconda told us that it had been the responsibility of David Kirgan and Cornel Cervantes, the former FMO and AFMO, to ensure that MAFMP firefighters were properly trained and certified.

Calvin Pino, Regional Fire Program Manager, SWRO, BIA, told us that when he met with MAFMP managers in March 2008 to see if they were prepared for the upcoming fire season, he learned that Kirgan and Cervantes had not yet started the Red Card certification process for MAFMP firefighters (**Attachment 4**). Pino told us that by this time in the year, firefighters should have already had their required physicals, pack tests, and 8 hour refresher training. Although MAFMP officials promised Pino that they would 'get on it,' Pino subsequently learned, following a series of fires at Mescalero (i.e. the Salt Well Fire, South Tularosa Fire, and Roger's Pasture Fire), that MAFMP firefighters had

been improperly dispatched to fire lines without Red Cards. Pino told us that he assigned former Assistant Regional Fire Management Officer John Morton to work with then Mescalero Agency Superintendent Robert LaCapa to investigate the matter.

John A. Morton, former Assistant Regional Fire Management Officer, SWRO, BIA, confirmed that he helped investigate Red Card certification issues at Mescalero in 2008 (**Attachment 5**). Morton told us that there had been a history of Red Card certification issues at the Mescalero Agency dating back to at least 2004. Following the Salt Well Fire at Mescalero in March 2008, questions began to surface about MAFMP firefighter Red Card certifications. However, it was not until the South Tularosa Fire in May 2008 that anyone was able to confirm that MAFMP firefighters were responding to fires without having their Red Cards. Morton recalled that a MAFMP fire management official told him that only 11 of the 35 MAFMP firefighters, responding to the South Tularosa Fire, were Red Card certified. He subsequently learned that Kirgan and Cervantes were among the individuals that did not have a Red Card.

Morton told us that on or about June 4, 2008, power lines arced in high winds and started the Roger's Pasture Fire on the Mescalero Reservation. When Morton learned of the fire, he went into IQCS to check whether MAFMP firefighters had obtained their Red Cards. To his surprise, he discovered that all MAFMP firefighters were claiming to be Red Card certified. Morton discovered that just a few hours earlier in the day, someone at MAFMP had gone into IQCS and issued Red Cards to firefighters, including Kirgan and Cervantes. When Morton attempted to determine who had certified the firefighters in IQCS, he found that someone had gone into the system using the password of a terminated MAFMP employee. Therefore, there was no way to determine who was responsible.

Morton told us that during the Roger's Pasture Fire, information was received that a crew of emergency firefighters (ADs) had been dispatched to the fire line without being Red Card certified. When LaCapa learned of this matter, he pulled the entire crew off the fire line and subsequently found that only 12 of the 20 emergency firefighters were Red Card certified. Additionally, LaCapa found that Cervantes had ordered a MAFMP crew boss to deploy emergency firefighters to the fire line even though Cervantes reportedly knew that many of them did not have Red Cards.

Robert C. LaCapa, former Superintendent, Mescalero Agency, SWRO, BIA, told us that he first became aware of Red Card certification issues at Mescalero following a series of fires in March, May, and June 2008 that caught MAFMP firefighters off guard and unprepared for the fire season (**Attachment 6** and See Attachment 5). After receiving information that MAFMP firefighters had responded to fires without being Red Card certified, LaCapa worked with Morton and other regional fire officials to investigate the matter. After discovering serious deficiencies within MAFMP's Red Card certification program, LaCapa placed Kirgan and Cervantes on administrative leave; revoked their authority to hire emergency firefighters and issue Red Cards; issued Kirgan and Cervantes letters proposing their removal from the BIA (**Attachment 7 and 8**), reported the matter to the SWRO Regional Director, and requested that NIFC conduct a complete program review of the MAFMP – with an emphasis on IQCS and Red Card certifications. LaCapa told us that his primary concern was the safety of MAFMP firefighters (See Attachment 6).

William T. Walker, Acting Regional Director, SWRO, BIA, told us that he became aware of Red Card certification issues at the Mescalero Agency in September 2008 when he arrived at the SWRO and Morton briefed him about the matter (**Attachment 9**). Walker said that by this time, the Red Card issues at Mescalero had already been thoroughly investigated and corrective action was being taken. However, Walker acknowledged that LaCapa's proposal to terminate Kirgan and Cervantes for

mismanagement of the MAFMP was still pending with the Regional Director's Office (See Attachments 7 and 8). Therefore, it was now Walker's decision to make.

Walker told us that following his discussions with the Office of Solicitor, BIA Personnel, Kirgan, and Cervantes, he decided to rescind LaCapa's proposed termination letters (See Attachments 7 and 8) and to issue permanent letters of reprimand to Kirgan and Cervantes (**Attachments 10 and 11**). Additionally, Walker reassigned Kirgan to the Zuni Agency and Cervantes to the SWRO (**Attachments 12 and 13**). Walker told us that the reassignments were not a part of a disciplinary action (See Attachment 9). Rather, Walker had lost confidence in Kirgan's and Cervantes' ability to manage the MAFMP. He said that Kirgan reluctantly accepted the reassignment while Cervantes decided to retire.

Walker told us that several things factored into his decision to issue letters of reprimand to Kirgan and Cervantes instead of terminating them (See Attachment 9). First, Mescalero Tribal officials had threatened to dissolve the tribe's relationship with the BIA if Kirgan and Cervantes, both members of the Mescalero Tribe, were terminated from the BIA. Additionally, the tribe had passed a resolution banning LaCapa from the reservation. Walker told us that one tribal official told him (Walker) that LaCapa would not be safe at Mescalero. Walker explained that even though the removal of Kirgan and Cervantes should not have concerned Mescalero tribal officials, the situation was delicate and he wanted to defuse growing tensions between the tribe and the BIA. Second, after meeting with Kirgan and Cervantes, Walker learned that neither of them had ever been put on notice about Red Card certification issues. Therefore, Walker felt that he didn't have enough against either Kirgan or Cervantes to fire them. Last, Walker believed that problems within the MAFMP might be resolved if he reassigned Kirgan and Cervantes. He explained that a large part of Kirgan's ineffectiveness as a manager had been caused by external pressures from the Mescalero Tribe. Walker believed that if he reassigned Kirgan to another location away from his tribe, Kirgan might be more effective as a leader.

NIFC Program Review of the MAFMP

Our investigation of Red Card certification issues at Mescalero Agency included a review of a "Final Draft" report prepared by NIFC on August 10, 2008 (**Attachment 14**). The report was based upon NIFC's June 2008 onsite review of MAFMP's fire programs: 1) fire operations; 2) dispatch; 3) logistics; 4) helitack; and 5) fuels. The review focused on each program's fire preparedness, qualifications of individuals, aviation safety, budget expenditures, and fire-fighter safety. The report identified the following Red Card deficiencies at the MAFMP:

- Firefighter Red Cards were not accurate.
- A perception existed that personal associations with fire management leadership would result in higher qualifications.
- The integrity of the Red Card system had been damaged at the Agency.
- Employee records were nonexistent and/or were scattered throughout the compound.
- Firefighting personnel were unsure of their Red Card status.
- Interagency policy and procedures for IQCS were not being followed.
- Due to recent reduction-in-force (RIF), fire personnel have been placed in fire positions in which they were not qualified for, per IQCS.
- IQCS standard operating procedures (SOPs) were not being followed and documentation was nonexistent for Bureau and Tribal employees.
- Agency fire training for tribal employees was difficult to get (instructors not prepared,

classes cancelled with little or no notice, and training completion certificates had not been distributed).

- Fire training was undependable with little or no notification of cancelled courses. Instructors had not made training sessions a priority, and instructors were unprepared.
- Task books were not being completed by firefighting personnel.
- Firefighting personnel claimed high complexity experience on low complexity fires.
- Firefighting personnel had initiated task books prior to meeting prerequisites and attended trainings without meeting the prerequisites.
- Task books were not entered properly into the system.
- Task books were often by-passed and never entered into the system.
- Qualifications were attained by providing overrides, often using erroneous reasons for the override.
- There was a general misunderstanding of the basic procedures associated with the Wildland Fire Qualification System by many employees.
- Employees were frustrated by the documentation process for submitting experience records, task books, training records, etc.
- Employees were reluctant to submit documentation for fear that it would not be entered, misplaced, or lost.
- Employee files were not kept and IQCS inputs were erroneous.
- Training coordination with BIA and tribal firefighters was poor.
- Training certificates for course completion were not given to students.
- Emergency firefighter coordination was inefficient.
- A substantial amount of work was required to rebuild employee records to accurately reflect earned qualifications.

Agent's note: As of the date of this report, NIFC's review of the MAFMP has yet to be finalized.

Craig Cook, Deputy Training Officer, NIFC, confirmed that he participated in the program review of MAFMP's fire programs in June 2008 (**Attachment 15**). Cook said that he was responsible for examining MAFMP's fire preparedness which included a review of Red Card certifications. Cook told us that when he audited the IQCS in an attempt to determine whether MAFMP firefighters were properly trained and Red Card certified, he discovered that things were a mess. He explained that many of the MAFMP firefighters did not have training documents loaded into IQCS to qualify them for Red Card certification. When Cook spoke to MAFMP firefighters, many of them expressed a frustration with the Red Card certification process at MAFMP. Several firefighters reported that they had been reluctant to provide their training documents to MAFMP personnel for input into IQCS since MAFMP officials had been known to lose or misplace training records. Additionally, Cook found that task books were not being kept or maintained by many of the MAFMP firefighters. Cook said that the deficiencies he identified with Red Card certifications at the Mescalero Agency were incorporated into the NIFC report.

Corrective Action Taken

Through our interviews with Waconda, Pino, Morton, LaCapa, and Walker, we learned that the following corrective actions were taken by BIA management to resolve Red Card certification issues at the Mescalero Agency (See Attachments 3, 4, 5, 6 and 9):

- Kirgan and Cervantes were placed on administrative leave.

- Red Card certified BIA personnel were detailed to the MAFMP.
- Kirgan and Cervantes were disciplined and received permanent letters of reprimand.
- Kirgan and Cervantes were reassigned out of the MAFMP.
- The SWRO plans to re-announce and hire a new FMO and AFMO at Mescalero.
- Position descriptions for the FMO and AFMO were re-written and up-dated.
- The MAFMP's authority to enter data into IQCS has been eliminated and delegated to NIFC until a new FMO and AFMO have been hired.
- NIFC conducted a thorough review of IQCS and prepared a report for BIA management to identify which MAFMP firefighters were Red Card certified.
- BIA management met with Mescalero tribal officials to let them know about the issues within the MAFMP and the steps being taken to "clean house."
- BIA management has attempted to address disruptive conflicts among MAFMP staff members by emphasizing a team approach and letting employees know that internal strife would not be tolerated.
- MAFMP fire programs were stepped down (i.e. restricted and limited) in June 2008.

Cook told us that the 2008 NIFC report fully encompassed all of the Red Card certification issues at MAFMP and provided several recommendations to remedy the problems (See Attachment 15). Since NIFC's 2008 program review of MAFMP fire programs, Cook believes that BIA management has "closed the loop holes" and took appropriate action to correct the Red Card certification issues. He told us that the only thing left for BIA management to accomplish was to fill the vacant FMO position with a manager capable of keeping the MAFMP fire program on track.

Overtime and Hazard Pay Claims

During our investigation, we attempted to determine whether MAFMP firefighters, lacking Red Card certifications, had improperly collected overtime and hazard pay while responding to the South Tularosa Fire. We found that while the overtime claims were allowable, the hazard claims were not.

Overtime Pay Claims

Through our cross referencing of Red Card certifications with MAFMP payroll records, we identified that 26 of the 27 MAFMP firefighters, that were not Red Card certified, collectively received \$30,314.27 in overtime compensation for the South Tularosa Fire (**Attachment 16**). However, our review of payroll records and interviews of BIA fire management officials provided no evidence that any of the overtime charges had been unauthorized or inappropriate. Additionally, our review of federal pay regulations (i.e. Title 5 CFR, Sec. 550-111 – Authorization of overtime pay) found no prohibitions against the payment of overtime with respect to Red Card certifications.

Hazard Pay Claims

We determined that agency policy (i.e. BIA Wildland Fire and Aviation Program Management and Operations Guide, Chapter 13, Part 2 (b)) did require Red Card certifications for the receipt of hazard pay for MAFMP personnel. Despite this requirement, we found that 13 MAFMP employees collected a total of \$3,778.05 in hazard payments for work they performed on the South Tularosa Fire when they were not Red Card certified (See Attachment 16). We identified the following MAFMP employees as improperly receiving hazard payments:

<u>Name</u>	<u>Hazard Pay</u>
Harold Antonio	\$489.86
Tielson Cajé	\$ 84.94
Cornel Cervantes	\$420.32
Rylee Chino	\$197.35
Cory Chino	\$184.33
William Hornsby	\$354.94
David Kirgan	\$347.87
Christie LaPaz, Jr.	\$612.68
Mark Paul	\$137.58
Leland Pellman	\$428.36
Rufus Sago	\$183.23
Daniel Saiza	\$144.55
Michael Torres	\$192.04

Although we found that the aforementioned MAFMP employees had improperly received hazard payments for their work on the South Tularosa Fire, we learned that BIA officials were aware of this matter and reluctant to take action against MAFMP employees. Waconda told us that he did not believe that the money should be repaid since the firefighters had risked their lives in responding to the fire (See Attachment 3). Instead, Waconda faulted Kirgan and Cervantes for knowingly dispatching uncertified firefighters to the fire line. Walker told us that BIA management had addressed every issue within the MAFMP except for the hazard pay issue (See Attachment 9). Walker advised that BIA management was reluctant to take action since the time and effort needed to recover the hazard pay (i.e. \$3,778.05) would cost more than the actual amount lost. Additionally, that the firefighter's union would likely protest the repayment since firefighters had worked under hazardous conditions while responding to the South Tularosa Fire.

SUBJECT(S)

Name: David Kirgan
 Title/Position: Fire Management Officer, GS-12
 Address: BIA Zuni Agency

Name: Cornel T. Cervantes
 Title/Position: Supervisory Forestry Technician, GS-10
 Address: P.O. Box 83, Bent, NM 88314

Name: Harold Antonio
 Title/Position: Forestry Technician, GS-5
 Address: Mescalero, NM

Name: Tielson R. Cajé
 Title/Position: Career Seasonal, Forestry Technician (Fire), GS-5
 Address: BIA Mescalero Agency

Name: Cory D. Chino
 Title/Position: Career Seasonal, Forestry Technician (Fire), GS-5
 Address: BIA Mescalero Agency

Name: William P. Hornsby, Jr.
Title/Position: Forester, GS-11
Address: BIA Mescalero Agency

Name: Christie Lapaz, Jr.
Title/Position: Engineering Equipment Operator, WG-10
Address: BIA Mescalero Agency

Name: Mark A. Paul
Title/Position: Forester, GS-9
Address: BIA Mescalero Agency

Name: Leland C. Pellman
Title/Position: Forestry Technician (Fire), GS-9
Address: BIA Mescalero Agency

Name: Rufus R. Sago
Title/Position: Forestry Technician (Fire), GS-5
Address: BIA Mescalero Agency

Name: Daniel Saiza
Title/Position: Career Seasonal, Biological Technician, GS-5
Address: BIA Mescalero Agency

Name: Michael Torres
Title/Position: Forestry Technician (Fire), GS-3
Address: Mescalero, NM

Name: Rylee Chino
Title/Position: Unknown
Address: BIA Mescalero Agency

DISPOSITION

Since this matter was thoroughly investigated by BIA and NIFC officials, with appropriate action to correct Red Card certification issues at the MAFMP, no further investigative activity is warranted. Our investigation of the alleged misuse of fire suppression funding at the Mescalero Agency remains pending.

ATTACHMENTS

1. Copy of anonymous complaint submitted to DOI-OIG Hotline, dated October 23, 2008.
2. Copy of Office of Special Counsel referral to the Office of the Secretary, DOI, dated January 22, 2009.
3. IAR – Interview of John Waconda, Acting Superintendent, Mescalero Agency, SWRO, BIA,

dated March 17, 2009.

4. IAR – Interview of Calvin Pino, Regional Fire Program Manager, SWRO, BIA, dated March 22, 2009.
5. IAR – Interview of John A. Morton, former Assistant Regional Fire Management Officer, SWRO, BIA, dated March 27, 2009.
6. IAR – Interview of Robert C. LaCapa, former Superintendent, Mescalero Agency, SWRO, BIA, dated March 18, 2009.
7. Copy of memorandum to Wildland Fire Program Manager David Kirgan from Superintendent Robert LaCapa, regarding Notice of Proposed Removal, dated August 6, 2008.
8. Copy of memorandum to Supervisory Forestry Technician Cornel T. Cervantes from Superintendent Robert LaCapa, regarding Notice of Proposed Removal, dated August 25, 2008.
9. IAR – Interview of William T. Walker, Acting Regional Director, SWRO, BIA, dated March 19, 2009.
10. Copy of memorandum to David Kirgan from William T. Walker, regarding Letter of Reprimand, dated December 3, 2008.
11. Copy of memorandum to Cornel T. Cervantes from William T. Walker, regarding Letter of Reprimand, dated December 3, 2008.
12. Copy of memorandum to David Kirgan from William T. Walker, regarding Reassignment, dated December 12, 2008.
13. Copy of memorandum to Cornel T. Cervantes from William T. Walker, regarding Reassignment, dated December 12, 2008.
14. Copy of “Final Draft” report, prepared by NIFC, dated August 10, 2008.
15. IAR – Interview of Craig Cook, Deputy Training Officer, NIFC, dated April 2, 2009.
16. Copy of spreadsheet identifying MAFMP employees that received overtime and hazard pay, undated.

BUREAU OF INDIAN AFFAIRS INVESTIGATION

This memorandum is in response to an Office of Special Counsel letter dated 22 January 2009, Subject: OSC File No. DI-09-0597. The letter requests a report be generated in the format that follows as to the allegations that employees at the Mescalero Agency violated a law, regulation or rule and created a substantial and specific danger to public safety by engaging in and receiving payment for firefighting activities for which they were not certified.

Requirements of 5 U.S.C. 1213(d)

1. *A summary of the information with respect to which the investigation was initiated.*

In May 2008, after suppression activities for the South Tularosa Fire were completed, it came to the attention of Mescalero Agency Superintendent Robert Lacapa that individuals on a type 2 crew had been actively involved in suppression activities on the fire but did not have a current "Red Card" indicating they were qualified to be deployed for fire suppression duties. This was a major safety violation and the superintendent began an investigation into the reasons why the violation had occurred. Subsequently to this discovery by the agency superintendent, an Inspector General complaint was received and in January 2009 a report from the Office of Special Counsel was received. Both requested responses. Currently the Office of the Inspector General, Department of the Interior is conducting an investigation into the possible receipt of hazardous duty pay by individuals at the Mescalero Agency who were not eligible for such pay because they were not qualified to be wildland firefighters. The investigation by the IG will determine if the individuals in question intentionally filed fraudulent claims for both hazardous duty pay and overtime pay.

2. *A description of the conduct of the investigation*

Mr. Lacapa, Mescalero Agency Superintendent, enlisted the assistance of the Southwest Regional Assistant Fire Management, John Morton to determine if the type 2 crew had been issued red cards indicating they were qualified to be deployed as a fire fighting crew. Mr. Morton, with the assistance of personnel from the National Interagency Fire Center, reviewed the qualifications of the crew members and all government employees who had been involved in the suppression of the South Tularosa Fire by checking the IQCS system which houses the individual qualification records for firefighters and the time sheets for the incident.

3. *A summary of any evidence obtained from the investigation*

Mr. Morton ascertained that the type 2 crew had indeed been deployed without being qualified or issued a red card. He also discovered that at least ten agency employees who did not have current red cards had been paid hazardous duty pay and overtime for duties performed during the fire. The documents supporting these findings were assembled and provided to Mr. Lacapa. He also found that individuals had been encoded into the Incident Qualifications and Certifications System (IQCS) as being qualified to be assigned to positions for which they were in reality not qualified for.

4. Violations

- A. Violations of the Incident Qualifications and Certifications System were found in that personnel had qualifications encoded into the system that they were not in fact qualified to perform. *Blue Book page 13-4 Paragraph 2.a. and Wildland and Prescribed Fire Qualifications System Guide page 35*
- B. Red cards were issued to personnel who were not qualified to receive them. *Blue Book page 14-4 paragraphs 2.a and 2.b. and Wildland and Prescribed Fire Qualifications System Guide page 35*
- C. Individuals claimed and were paid hazardous duty pay they were not eligible for. *Interagency Incident Business Management Handbook April 2004 page 23 paragraph 12.9-3 Criteria for Entitlement to Hazardous Pay Differential for Irregular and Intermittent Hazardous Duties and paragraph 12.9-4 Regulation*
- D. Safety standards were violated by sending unqualified personnel to suppress a fire.

The guidelines, regulations and policy documents that contain the guidance used to determine these violations are:

- (1) Wildland Fire and Aviation Program Management and Operations Guide(2008)
- (2) The National Wildfire Coordination Group (NWCG) Wildland Fire Qualification System Guide (PMS 310-1)
- (3) Federal Wildland Fire (Safety) Policy (December 1995 and revised 2001)
- (4) Interagency Wildland Firefighter Medical Standards Program Test Administrator's Guide for Work Capacity Tests

5.

A. *Changes in agency rules, regulations and practices:*

One of Mr. Cervantes defenses in the charge that the IQCS encoding was fraudulent was that any number of personnel who had access to the system could have done the encoding and then just entered his name as the encoder. This was found to be true and the program is being reviewed in order to determine if a

change needs to be made. That decision will be made by staff at the National Interagency Fire Center.

Program operation reviews were conducted by individuals who had been detailed into the Fire Management Officer position while Mr. Kirgan was pending removal and a review by the National Interagency Fire Center staff. Additionally, the National Interagency Fire Center conducted a national level review and made recommendations to improve the program. These recommendations are currently being reviewed for implementation. Among the actions being implemented are:

1. Annual Operating Plan and Step Up Plan are established.
2. Standard Position Descriptions for all Fire employees are completed.
3. Personnel with access to the IQCS system have been limited to regional office personnel only until such time as new personnel are hired at the Mescalero Agency.
4. Reorganization of the Fire Management Section

To implement item 4 above, Mr. Walker requested a Deputy Director for fire operations from the National Interagency Fire Center in Boise, Idaho be detailed to the Mescalero Agency to examine the structure and funding levels of the Fire Program. The individual prepared a reorganization plan that upon adoption will enable the program to operate within the current budget constraints. The new organization chart is currently being prepared for Mr. Walker's signature.

B. The restoration of any aggrieved employee

Disciplinary action was proposed against two individuals, David Kirgan, Fire Management Officer for the Mescalero Agency and Cornel Cervantes, the supervisory Forestry Technician. The charges against the two employees are listed in Section C below.

Upon receipt of the proposals to remove them, David Kirgan and Cornel Cervantes met with the Mescalero Tribal Council to inform them of the proposed actions. David Kirgan's father, Ray Kirgan, is a retired BIA employee who was the Mescalero Agency Fire Management Officer prior to his retirement and was a member of the tribal council at the time. Alfred Lapaz, David Kirgan's cousin was also a member of the tribal council at the time. David Kirgan's uncle, Carleton Naiche-Palmer is the President of the Mescalero Apache Tribe and as such conducts the council meetings. This was a blatant attempt to use tribal political leaders to influence a Bureau of Indian Affairs personnel action.

As a result of the meeting held with the council, the council passed non binding resolutions to have three individuals removed from their positions at the Mescalero Agency: Bernard Ryan, Forest Manager and direct line

supervisor for Mr. Kirgan; Robert Lacapa, Superintendent; and Christopher Little, Fuels Specialist. Mr. Little is also a member of the Mescalero Apache Tribe and resides on the reservation. The three individuals related to Mr. Kirgan did not recuse themselves from voting on the resolution.

Bernard Ryan, Mescalero Forest Manager, accepted a position with the Bureau of Land Management making the resolution for his removal a mute issue.

Mr. Walker requested that the Mescalero Tribal Council rescind the resolution against Christopher Little, Fuels Program Specialist for the Mescalero Agency. On April 13, 2009, Mr. Walker received a letter from Mescalero Tribal President Carelton Naiche-Palmer indicating that if Mr. Walker would return David Kirgan to his former post as the Fire Management Officer for the Mescalero Agency, the tribal council would rescind the resolution against Mr. Little.

Mr. Lacapa, Mescalero Agency Superintendent, was detailed to the Northern Pueblos Agency to be acting Superintendent pending approval by the Director, Bureau of Indian Affairs of his directed reassignment to the position of Superintendent, Southern Pueblos Agency. Mr. Walker met with the Mescalero Tribal Council and after lengthy discussions with the council made the determination that it was in the best interest of Mr. Lacapa and the Bureau of Indian Affairs to assign him to a new post.

C. Disciplinary action against any employee

When the investigation was completed, Mr. Lacapa made the decision to propose disciplinary action against the Fire Management Officer, David Kirgan, and the Fire Training Specialist, Cornel Cervantes, for improper management of the fire program. The charges were 1) Falsification and Misrepresentation of Official Government Records and 2) Failure to follow wildfire safety regulations.

The deciding official, Larry Morrin, Southwest Regional Director for the Bureau of Indian Affairs concurred with the proposal after receiving both oral and written responses from the two individuals. A draft letter for the removal of the two individuals was never finalized. Mr. Morrin was removed from his position in September 2008 and Mr. William Tandy Walker was detailed as the Acting Regional Director at that time. Mr. Walker reviewed the proposals and offered the two individuals the opportunity to make oral and written responses again so that he would be able to make an informed decision regarding the proposals.

After reviewing all the evidence and receiving reports from the Regional Staff, the BIA Employee Relations Officer and the Solicitors office, Mr. Walker decided a preponderance of the evidence was not sufficient to warrant a removal and rescinded the proposed actions and the two individuals were informed in writing on 3 December 2008 of that decision. On 12 December 2008, Mr. Walker issued written reprimands to Mr. Kirgan and Mr. Cervantes for the mismanagement of the fire program at the Mescalero Agency.

After reading the reviews conducted by individuals who had been detailed into the Fire Management Officer position while Kirgan was pending removal and a further review by the National Interagency Fire Center staff, Mr. Walker did not have confidence that the two individuals could satisfactorily resolve the issues found in the reviews or manage the program properly. Mr. Walker decided to reassign the two individuals to positions outside the Mescalero Agency. Mr. Kirgan was reassigned to the Zuni Agency as the fire management officer and Mr. Cervantes was reassigned to the regional office as a fire planner. Mr. Kirgan accepted his directed reassignment to the Zuni Agency. Mr. Cervantes chose to retire in lieu of accepting his reassignment.

- D. Currently, the Albuquerque Field Office of the Office of Inspector General is conducting an investigation into the question of the violation of the safety regulations and the pay issue to determine if there is criminal liability involved.

Indian Affairs agrees that hazard pay was improper but does not plan to recoup the pay for the following reasons: recouping the \$3778.05 in pay would cost the government more than the actual amount of pay received, the 13 employees that received the pay were ordered to respond to the fire and performed the work under hazardous conditions, and potentially the firefighter's union would protest the repayment since the firefighters did work under hazardous condition. The Bureau of Indian Affairs also has removed the two supervisors from their positions in Fire Management at Mescalero Agency. The reassignment of Mr. Kirgan and the retirement of Mr. Cervantes, coupled with the vacancy created by the relocation of the Forest Manager creates the opportunity to rebuild the Fire Management program at the Mescalero Agency with totally new management staff. The new staff will implement the changes suggested by the program reviews and initiate the new organizational structure.