

WILDLAND FIRE MANAGEMENT

90 IAM 1.4C (10)



NATIONAL WILDFIRE INVESTIGATION

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INTRODUCTION

The purpose of wildfire investigations on Indian Forest and Agricultural Lands is to determine the specific origin and cause of wildfires, to decide whether there is evidence that a crime has been committed, and to provide supporting documentation when litigation is necessary (25 CFR § 163.1 and § 166.8). A wildfire investigation must be a team effort; it is a blend of Fire Service and Law Enforcement personnel. Without close cooperation, investigative success is impossible.

Origin and Cause determination are the foundation of any investigation. Wildfire investigations in Indian Country range from simple brush fires to very destructive fires involving significant issues — including loss of life, homes and other property, and cultural and natural resources — as well as trespass and complex civil or criminal litigation. Every fire scene must be considered a possible crime scene until clear proof is found that the cause was either accidental or natural.

The accurate identification of wildfire cause is also critical to the success of our fire prevention programs.¹ It is through an efficient and accurate origin and cause determination that fire responsibility and deterrence strategies can be developed.

This Handbook describes the policies that define the roles and responsibilities of management and of the Wildfire Investigator. It covers the complicated jurisdictional issues in Indian Country, the investigation process as it relates to wildfire trespass, and the importance of coordination with law enforcement agencies. It also establishes National BIA wildfire investigation procedures and documentation requirements — from the initial response through the litigation process. This information is not all-inclusive, but it provides indispensable guidance based on the knowledge and many years of experience of both Bureau of Indian Affairs Branch of Wildfire Management (FIRE) and Bureau of Indian Affairs Office of Justice Services (OJS) personnel.

It is the BIA policy to make sure that all acts of trespass are properly investigated. Human-caused wildfires whether intentional or unintentional where trust resource damage (forest products/range land as defined in 25

¹ DeHaan, John D., *Kirks Fire Investigation*, 2002

CFR) has occurred are, by definition, a trespass. Under this policy, agency administrators are required to determine the specific cause and origin of all human-caused wildfire occurrences that cause damage to trust resources.

POLICY

The BIA Branch of Forestry and Fire Management policy is to investigate all wildfires to determine specific cause and origin. This policy is spelled out in the following documents:

- 620 DM 1 Wildland Fire Management
- 53 IAM 7-H Forest Trespass
- 90 IAM Wildland Fire Management Policies and Responsibilities
- XXIAM BIA Agricultural and Range Management Handbook - Draft
- OJS Law Enforcement Handbook 2nd Edition

AUTHORITIES

Numerous Federal laws and regulations govern Indian forest, range, and agricultural resources. They include the National Indian Forest Resources Management Act, 25 U.S.C. § 3101-3120; the American Indian Agricultural Resource Management Act, Public Law 103-177, 107 Stat. 2011; and Indian Agricultural Lands Trespass, 25 U.S.C. §3713.

Additionally, Appendix A contains a list of Federal statutes and regulations governing Indian law enforcement and crimes related to wildfires committed in Indian Country.

The Tribal laws, codes, and ordinances governing Indian Country vary from reservation to reservation and from jurisdictional area to jurisdictional area. Wildland Fire Investigators (INVF's) must become familiar with the Tribal laws, codes, and ordinances governing the lands in which their fire investigations are taking place, and be able to identify any violations during the course of an investigation. The first step is to obtain a list of the particular Tribal laws, codes, and ordinances within a jurisdictional area or reservation by contacting the Tribal Law Enforcement, Tribal Attorney, Tribal Judge, Tribal Advocate, or Magistrate.

In preparing a wildfire investigation report, the INV F must include all applicable Federal, state, county, municipal, tribal laws that have been violated.

GUIDANCE

The BIA has adopted the following publications, reports, guides, and handbooks:

Interagency Publications

- NWCG Handbook 1 (PMS 412-1)
- NFPA 921 Guide for Fire and Explosion Investigations Current Edition
- NFPA 1033 Standard for Professional Qualifications for Fire Investigator Current Edition
- NWCG FI-210 Wildland Fire Origin and Cause Determination Training
- NWCG 310-1 Qualifications and Standards for Wildland Fire Fighting.

BIA Publications

- 90 IAM 1.4C(6)-H National Fire Prevention Handbook 2012
- 53 IAM 7-H Forest Trespass Handbook
- 90 IAM Wildland Fire Management, Policies and Responsibilities
- Wildland Fire and Aviation Program Management and Operations Guide – Current Edition
- Office of Justice Services Handbook, 2nd Edition, July 1, 2008
National Memorandum of Understanding between Office of Justice Services and Office of Trust Services, 2008

Appropriate Use of Funding

Wildland fire suppression activities are funded through an appropriation from the United States Congress. Within the BIA fund codes, program codes and fire codes are assigned. A FIRECODE is issued for each wildfire occurrence in which expenditures are incurred. Branch of Wildland Fire Management and Office of Justice Services/Law Enforcement personnel may charge the appropriate time spent to the FIRECODE for their participation in activities related to the origin and cause determination and suppression of a wildfire. The appropriate time varies from section to section within the Branch of Wildland Fire Management. In addition, OJS/Law Enforcement personnel appropriate time will also vary, depending on the type of work being performed, type of assistance requested, and whether the request is made on a resource order (as ICS qualified) for a wildfire incident. The

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following list of examples is not all-inclusive, but it provides examples of some of the more frequent program positions participating in wildfire origin and cause determination and suppression, and the allowable personnel charges back to a FIRECODE:

Base Pay Program	Type of Hours Worked on Fire	Appropriate Fire Code Charges
Preparedness & Prevention	Base	None
Preparedness & Prevention	Overtime, Hazard Pay	All
Fuels (WUI, Non-WUI)	Base, Overtime, Hazard Pay	All
Forestry, Land Operations, and other Section	Base, Overtime, Hazard Pay	All
Law Enforcement – OJS/Tribal, Conservation Officer/Warden *	Base – Normal Law Enforcement or Investigative Duties and Responsibilities.	None
Law Enforcement – OJS/Tribal, Conservation Officer/Warden	Base & Overtime– On a resource order as an IQCS qualified INVF and off local unit.	All

**If position description includes a description of duties that includes investigation, base pay and overtime is not an authorized expenditure to FIRECODE.*

CHAPTER 1-- RESPONSIBILITIES OF BIA MANAGEMENT

Leadership and oversight are fundamental in pursuing the appropriate legal actions related to the findings of a wildfire investigation. This section defines the responsibilities specific to BIA management at each administrative level. Additionally, 25 CFR Chapter 1, §163.29 Trespass contains further description of responsibilities specific to wildfire trespass.

Program oversight and review at the tribal, agency, regional, and national levels must conform to established policy and procedures, and form the basis for deficiencies and provisions for corrective action(s). Oversight is necessary to achieve our wildfire prevention and wildfire investigation goals and objectives at multiple administrative levels. For an organizational chart of the current BIA Trust Services Branch, see Appendix B.

1.1. Deputy Director, Office of Trust Services

- Implements the Federal Wildland Fire Management Policy, along with recommendations and associated amendments.
- Provides for the coordination of wildland fire management activities with other Federal, state, and non-government fire protection agencies.

1.1.1 Chief, Division of Forestry and Fire Management

- Provides overall direction to the wildland fire management program.

1.1.2 Bureau of Indian Affairs (BIA) Director, National Interagency Fire Center (NIFC)

- Implements policy in the 10-Year Comprehensive Strategy (2001) and assists in the execution of the associated Implementation Plan.
- Provides policy and procedural guidance to Regional Directors to achieve wildfire prevention and education objectives.
- Reviews and evaluates regional prevention programs to ensure that all regions meet national standards.
- Establishes minimum standards for Wildfire Prevention Plans, operational implementation, evaluation, and fiscal reporting.
- Ensures wildfire investigation policies are developed.
- Develops national fire trespass policy and guidance for Indian forest resources.

1.1.3 Regional Directors

- Negotiate cooperative agreements, self-determination contracts, and self-governance compacts with tribes for wildland fire management programs, as needed.
- Oversee wildfire prevention management programs within the region.
- Develop Regional directives for standards and additional procedural policy, as needed, for wildfire prevention planning, operational implementation, evaluation, and fiscal accountability.
- Develop region-wide wildfire investigation policies and procedures.
- Develop regional forest trespass guidelines for program implementation to ensure that trespass policies and standards are met.

1.1.4 Superintendents (unless excepted by Regional Directive)

- Take positive action to obtain compliance with established standards and safe practices.
- Ensure that prerequisite prevention plan requirements for a permit system, law enforcement agreement, program support, and fire investigation are current.
- Ensure wildland fire management personnel develop and maintain fire management job qualifications and meet physical fitness standards in accordance with policy.
- Assign personnel to wildfire prevention activities, based on individuals' qualifications and demonstrated ability.
- Request regional and national wildfire prevention/education and fire investigation teams, as needed, to mitigate wildfire prevention issues, including but not limited to arson, other person caused fire activity, home evaluations and public education.
- Initiate investigation of trespass to determine cause and origin and whether fire trespass has occurred.
- Notify the owner(s) of the land, or the party in possession of the trespass products, that a trespass has occurred.
- Prepare "Notice of Trespass and Recovery of Trespass Damages" letter against any alleged trespasser.

1.1.5 Deputy Director, Office of Justice Services

- Responsible, through the chain of command, for criminal investigative functions enumerated in the Indian Law Enforcement Reform Act.

- Provides support services to assist the uniformed component of the law enforcement programs, which are managed through District and Agency Offices.
- Develops and manages an audit program with follow-up activities for the entire law enforcement organization, directing changes in the criminal investigations programs and improvements in police operations, resulting from audit or inspection activities.
- The Director and staff, through the branches and sections, investigate and present for prosecution, cases involving violations of section 1152 and 1153 of Title 18, United States Code, and all other applicable Federal laws within Indian Country.
- Responsible for cooperation with, and providing assistance to, Federal agencies and tribes in the collection, research, and analysis of data related to law enforcement.
- Responsible for criminal investigation functions, as defined in the Indian Law Enforcement Reform Act.

1.1.6. Special Agents in Charge, Office of Justice Services

- Ensure that all major crimes are investigated and completed.
- Coordinates mobilization of investigative equipment and resources, as needed.
- Establish communication with investigative resources, such as the FBI, US Attorney's Office, and Tribal Court.
- Responsible for case review and presentation for prosecution of cases involving violations of section 1152 and 1153 of Title 18, United States Code, and other applicable Federal laws within Indian country.
- Review proposed local Standard Operating Procedures for wildfire investigations.

1.1.7. Special Agents, Investigations Branches — Agency

- Coordinate suspected Major Crimes — wildland arson, fire investigation in conjunction with the local BIA/Tribal fire management officers.
- Develop arson task force operational plans, as needed.
- Ensure law enforcement personnel take positive action to obtain compliance with established arson investigation standards and follow established wildland fire personal protective equipment procedures, policies, and Federal laws.
- Facilitate communication with the Special Agent in Charge, Agency Superintendent, Tribal Official, and Wildfire Team.

- Participate in the development of the local agency/tribal wildfire investigation standard operating procedure.

1.1.8. BIA NIFC Special Agent, Investigation Branch

- Serves as the BIA National Fire Investigation Coordinator in concert with the BIA NIFC-Deputy Fire Use and Fuels.
- Coordinates investigations with wildfire investigators and law enforcement in BIA Regions.
- Develops, coordinates, and evaluates the training needs of both OJS and BIA Fire Management.
- Leads the development of BIA standardized wildfire investigation policies, procedures, and standard operating plans.
- Serves as a Subject Matter Expert regarding fire related jurisdictional issues with Public Law 280.
- Serves as the lead on wildfire investigation teams, as needed.
- Serves as the primary contact to the BIA OJS Tribal Court Program.
- Coordinates the use of Federal Violation Notices as they relates to wildfire.
- Serves as the Liaison for OJS and FIRE to the US Attorney's Office for all issues related to wildfire investigations and prosecutions.

1.2. Office of the Solicitor

The relevant legal agencies of the Federal Government are the DOI's Office of the Regional Solicitor and the United States Attorney's Office. Attorneys in the Office of the Regional Solicitor are charged with furnishing legal advice to the Bureau of Indian Affairs, and they also provide the first legal review of any proposed lawsuit that might be filed by the United States to vindicate a restricted landowner's rights. Lawyers in the United States Attorney's Office are responsible for representing the United States before the courts. Any investigation approved and prepared for filing by the Solicitor's Office must be sent to the Department of Justice, which has discretion as to whether a suit will be filed, and if so, what remedies will be sought.

If you are not sure if a trespass investigation might require involvement of an attorney's advice, refer to the 53 IAM Supplement 7-H Forest Trespass.

CHAPTER 2 – ROLES & RESPONSIBILITIES: FIRE INVESTIGATORS & LAW ENFORCEMENT OFFICERS

The Fire Investigator (INVF) is responsible for the origin and cause determination of the wildfire and the report that documents the actions taken during the investigation. Any activities beyond this — such as suspect interviewing/interrogation, surveillance of persons of interest, search warrants, arrest warrants, collection of evidence not from the fire scene — are exclusively the responsibility of a Law Enforcement Officer (LEO). The INVF is **not authorized** to participate in these activities and **must not** do so.

Monitoring vehicle traffic in forested areas during periods of increased arson activity through the use of hidden video equipment is permissible for the INVF. This activity must be coordinated with the appropriate law enforcement office to ensure admissibility of information collected and to ensure the safety of the INVF. However, the INVF is **not authorized** to conduct **surveillance on persons of interest** with hidden video equipment.

2.1. Criminal and Non-Criminal Wildfire Investigations

The following describes the roles of the INVF and the LEO for both Criminal and Non-Criminal incidents:

2.1.1. Wildfire Investigation – Criminal: Arson is suspected, and/or other criminal activity that requires LEO response.

Role of INVF: Assist LEO as directed/requested in processing the FIRE scene, assist as needed with fire-related evidence collection, fire-behavior determination; and provide a complete written origin and cause determination report to the Officer in charge of the investigation. The INVF may also be requested to take the lead in the fire trespass case preparation.

Role of LEO: Take the lead in managing and processing the overall scene, conducting the overall investigation, collecting and securing evidence, interviewing and interrogating, preparing the final report, and submitting it to the proper court of law.

Arson is suspected, and/or other criminal activity that requires a response by the FBI.

Role of INVF: Follow the directions of the LEO in protecting the scene; remain available to provide information about the fire and witness(es) statements, as needed; assist LEO/OJS/FBI with processing the FIRE scene, if requested.

Role of LEO: Make the decision to involve the OJS/FBI; secure the scene and direct the activities of any INVF personnel on the scene; remain in charge of the scene and investigation until relieved by the OJS/FBI. If a tribal investigator is the Officer in Charge, s/he will have the same responsibilities.

2.1.2. Wildfire Investigation – Non Criminal:

These are investigations where the wildfire is the only incident to be investigated and there is no evidence of criminal activity. Wildfire trespass may be included in this category.

Role of INVF: Take the lead in processing the fire scene, interviewing witnesses, securing evidence, and preparing the final report, including analysis for fire trespass.

Role of LEO: Assist the INVF, if needed, with scene control, evidence collection/chain of custody, and interviewing witnesses; collaborating with INVF to ensure no other criminal activity has occurred. Also, the LEO may be needed to ensure personal safety of fire investigation staff on scene. The LEO will follow up any investigations where there are suspects, witnesses, injuries, fatalities, and/or property loss or damage.

CHAPTER 3 – CODE OF ETHICS

The BIA Branch of Wildland Fire Management believes that wildfire investigators need to have clear policy guidance, advice, and counsel available to help them perform their duties, consistent with the standards established in this handbook. Wildfire Investigators and trainees must be fully aware of the ethical responsibilities of their position and must strive constantly to live up to the highest standards of wildfire investigation, as described in our Code of Conduct Agreement (see **Appendix C**).

All Wildfire Investigators (including trainees) must sign the Code of Conduct Agreement and submit it to the course coordinator prior to attending any BIA FI-210 course. For those wishing to attend an FI-210 course sponsored by another agency, the agreement must be sent to the appropriate BIA regional WUI/Prevention Specialist. Failure to sign will result in the individual's Wildfire Investigator qualifications being suspended. AD's must also adhere to the Code of Conduct. Copies will be maintained in each employee's official personnel files.

Maintaining confidentiality, impartiality and professionalism throughout the wildfire origin and cause determination process is mandatory. Data collection, report writing, and the courtroom phases of the investigation conform to the highest standards. All wildfire investigators working on tribal trust lands are required to perform their duties in an honest, ethical, and competent manner.

3.1. Elements of Professional Ethics and Conduct

- Conduct wildfire investigations promptly.
- Conduct wildfire investigations that are respectful of tribal resources, culture, and traditions — in a manner that inspires the confidence of the public.
- Provide disclosure and finding of fact in an unbiased, professional fashion.
- Avoid alliances that are inconsistent with, and might compromise, an honest unbiased investigation.
- Maintain confidentiality for the protection of innocent parties.
- Develop professional working partnerships with law enforcement, fire services, legal counsel, support services, and juvenile intervention coalitions.
- Comply with all Federal, state, tribal and local laws and regulations.

- Approach all fires without presumption of cause until data is collected and analyzed.
- Treat all fire scenes as crime scenes until otherwise determined.

3.2. Operational Standards for Professional Performance

- INVFs are limited to determining the origin and cause of wildfires and whether wildfire trespass regarding natural resources and/or agricultural products has occurred.
- Safety, health, and welfare of the investigator and those assisting with the investigation must never be compromised.
- Provide only those services that the investigator is qualified to perform.
- The investigator should update their curriculum vitae and not falsify, misrepresent, or exaggerate academic or professional qualifications.
- Cooperate with other investigating agencies.
- Identify, interview, and treat all witnesses fairly, with respect and impartially regardless of social, political, racial, ethnic, religious considerations, economic status, physical characteristics, gender, or marital status.
- Make prompt and effective referrals to other agencies.
- Work within your chain of command (refer to Delegation of Authority when off unit).
- Prepare investigative reports that are accurate and clearly written, with all facts reported as simply as possible.
- Make sure that the reports do not contain unsupported allegations, suppositions or bias and that the presentation follows standard professional practices, with a minimum of spelling and grammatical errors.
- Never accept compensation, financial or otherwise, from any entity other than the primary employer (BIA or Tribe).
- If serving as team leader for an investigation task force, make sure that all members of your team comply with each of these operational standards.
- Avoid all known conflicts of interest; document and report all known incidents of conflict of interest (see item 2.4).

3.3. Conflict of Interest

A conflict of interest may arise when an investigator, or someone else involved in the investigation, has competing professional or personal interests that make it difficult to fulfill investigation duties impartially. The conflict of interest may exist even if no unethical or improper act results from it. Recusal from an investigation assignment may be necessary if a suspect or witness is a friend, relative, or co-worker.

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CHAPTER 4 – WILDFIRE INVESTIGATION: STANDARD OPERATING PROCEDURES

Law enforcement is an area in which the responsibilities of the BIA are vastly different from those other DOI agencies. The law enforcement branch, part of BIA's Office of Justice Services (OJS) of the BIA, is responsible for all law enforcement activities on Indian Land, not just natural resource crimes. At times, the FIRE community's needs are not always met because of the OJS's overwhelming caseload, which extends far beyond wildfire criminal activity.

This situation has led to the development of National Standard Operating Procedures for wildfire response. INVFs at every location must have a clear understanding of OJS responsibilities to ensure that both parties are to work together to find solutions that have a positive impact on the tribes we serve.

4.1. OJS– FIRE Standard Operating Procedures

Several actions may become necessary during a wildfire investigation that requires a law enforcement response. This section establishes national standard operating procedures (SOPs) between OJS and FIRE when responding to wildfires and wildfire crimes. This SOP establishes operating procedures and defines working relationships between OJS and FIRE, as well as the minimum requirements for requesting assistance from law enforcement when a wildfire has occurred.

4.1.1. Evidence Collection, Transfer, and Storage

Successful investigations and criminal prosecutions depend on the collection, preservation, and forensic analysis of evidence. Forensic analysis of evidence is often crucial in determining guilt or innocence. Collecting, processing, and storing evidence must follow the guidelines provided in the FBI's Handbook of Forensic Services. The wildfire investigator needs to become thoroughly familiar with the rules of evidence, which govern the admissibility of proof at a trial (see NFPA 921 – 11.5.1.1). A copy of the Handbook of Forensic Services 2003 may be obtained from the FBI (see **Appendix D**).

Photography and other illustrative forms of evidence are crucial elements in the documentation of wildfire investigations. All photographic procedures must follow the standard operating procedures described in Chapter 5, Section 5.5.2., of this handbook.

All evidence will be transferred to a BIA, Tribal, or Local Law Enforcement facility for secure storage. The process for the storing of evidence must be developed and clearly understood as part of the local unit's wildfire investigation policies and procedures. Consultation with the appropriate law enforcement office is essential **before** any storage occurs. The initial wildfire investigator must maintain a copy of all evidence documentation and should be part of the investigation file.

Investigators should follow the guidance for the rules for chain of custody, as described in NFPA 921 11.5.2.2 and 16.9, whenever evidence is collected, processed, and stored. Arrangements for the transfer and storage of all evidence collected from wildfire scenes must be a very high priority. The INVF must be mindful of spoliation issues. In addition, all written documentation (evidence transfers, case number identification, etc.) protocols must be defined in advance, and the number of evidence transfers limited to as few as possible. An evidence custodian (one individual) at each incident will be designated to maintain custody of evidence from time of collection and sign in at the storage facility.

In instances where evidence has been identified and protected by initial attack resources, and the wildfire investigator or law enforcement official has not yet arrived on scene, the initial attack incident commander must designate a person to remain on scene and maintain the chain of custody until the wildfire investigator or law enforcement official has arrived.

It is the responsibility of the wildfire investigator, in consultation with the appropriate law enforcement partner, to recommend the appropriate laboratory examination and testing of evidence (see NFPA 921 16.10.1 for guidance). Requesting evidence examination from a laboratory is performed by the appropriate law enforcement office. The INVF cannot make this request.

The INVF must ***never collect undetonated explosives or similar devices***. Instead, the investigator must establish a generous safety perimeter around these types of devices and notify law enforcement immediately. Only ***trained law enforcement*** personnel are authorized to photograph, collect or detonate of these devices.

Additionally, the INVF must never attempt to obtain or collect evidence not present on the scene. Only law enforcement may gather this type of evidence (surveillance tapes, remote photographs, etc.)

On Indian Land:

When the cause is criminal activity and there is an **injury, fatality, or real property damage (including timber loss)**, the INVF must mark, identify, photograph, and protect all evidence. Contact BIA-OJS or local law enforcement prior to collecting any evidence. If cleared by BIA-OJS or local law enforcement, or if they cannot be reached, the INVF will also collect and catalogue the evidence. Evidence will be transferred to the local BIA-OJS or Tribal/State police/conservation warden/officer. The transfer will be documented in the field report and signed for on the Evidence Collection Log. The Evidence Collection Log will be included in the final INVF report.

When the cause is suspected to be criminal, but there is **no injury, fatality or real property damage**, the INVF should identify, photograph, and collect evidence **only if** the LEO is unavailable, then immediately transfer it to BIA-OJS or a tribal/state police/conservation officer.

When the cause is not criminal, the INVF should identify, photograph, and collect evidence, then store it in a secured evidence storage facility. INVF should coordinate with the local police department to secure this type of evidence.

On Non-Indian Land:

Mark, identify, photograph, and protect all evidence — and contact the authority having legal jurisdiction — prior to actual collection of the evidence on these investigations. If the LEO is unable to collect the evidence, or if cleared to proceed by the authority having jurisdiction, the INVF will collect and catalogue the evidence, which will be maintained in a secured storage unit/device until it is properly transferred to the authority having legal jurisdiction.

4.1.2 Interviewing

All individuals identified at the wildfire scene should be contacted as potential witnesses, and their statements should be obtained by trained individuals. In cases where trained individuals are not available, fire personnel should record, at a minimum, the name, contact information, and description of each potential witness. Fire personnel may collect a voluntary statement from a witness if the witness has to leave the scene. This statement must be signed by the witness giving the statement and signed by fire personnel receiving the statement.

When possible, witness statements should be written, signed, and dated by the person making the statement as true and correct. When witnesses are unable to write out a statement; the INVF can write it for them, adding, "Statement of John Doe as told to wildfire investigator Jimmy Q, investigator." Have the witness initial the beginning of the statement, approve any changes (spelling errors, etc.) made to the statement, and initial the end of the statement. Make sure that they sign and date the statement as true and correct to the best of their knowledge.

If witnesses on scene identify additional witnesses who are not on scene, the INVF must forward the information to the LEO for follow up. The INVF may follow up only when the individual is employed by FIRE and is not a person of interest. In cases regarding suspected trespass, refer to guidance in 53 IAM, Volume 7, Trespass.

If at any time a witness admits s/he started the wildfire, the INVF must document all statements provided and contact LEO immediately. This information must be transposed onto a BIA Fire Investigation Form – Voluntary Statement.

If anyone is identified as a person of interest related to the wildfire occurrence, the INVF must contact law enforcement immediately. The LEO (not the INVF) will be the lead agency for any follow up related to this information. They will conduct any follow-up interviewing or interrogation deemed necessary. However, the INVF is encouraged to assist the LEO in developing a line of questioning related to the wildfire when arson is suspected.

4.1.3 Scene Protection and Preservation

The key to success in any investigation is the level of protection and preservation of the scene by the initial responders. Since wildfire investigators do not normally arrive on scene with the initial responders, it is the responsibility of the initial responders to preserve and protect the incident scene to the extent possible. (It is understood that a great deal of damage and disturbance occurs during the suppression activities.)

Scene Protection:

Proper investigative procedures, which begin with the initial attack, can more accurately pinpoint fire causes and can preserve valuable evidence that might otherwise be destroyed by suppression activities.

The investigation must start at the time a fire is discovered or reported.

First Responders:

First responders play an important role in protecting evidence, so it is important for all first responders to receive training in identifying and protecting the area of origin of the fire. The NWCG course — FI-110, Wildfire Observations and Origin Scene Protection for First Responders — should be a priority for all investigators in their effort to assist in the training of first responders.

It is important that first responders understand how their actions, both during and following suppression, can enable a qualified investigator to accurately determine the origin and cause.

Scene Preservation:

The initial response forces must exercise a high level of precaution and awareness to identify, protect, and secure the general origin area, including:

- Documenting the fire perimeter upon arrival.
- Protecting the general origin area with flagging or rope.
- Keeping suppression activities away.
- Parking vehicles in another area to prevent evidence destruction.
- Allowing only authorized personnel into the area.
- Preservation of any tire or foot impressions.
- Taking photographs of the fire upon arrival.
- Leaving all potential evidence undisturbed.²
- Requesting LEO support as needed.

First responders must maintain the scene until properly transferring it to law enforcement or the fire investigator, so as to not violate any chain of custody.

² In extreme situations with lack of personnel or law enforcement, evidence may be collected and maintained by initial attack forces. Documentation of these actions is required.

4.1.4. Observations

The initial responders must also recognize the importance of documenting their observations upon arrival at the fire scene. This includes but is not limited to:

- Witness Identification
- Weather Observations
- Fire Behavior
- Individuals/vehicles leaving the area

4.1.5. Training and Qualifications

FIRE will notify Tribal Law Enforcement and/or BIA OJS of fire training opportunities. At a minimum, training opportunities will be provided for Law Enforcement personnel regarding wildfire investigation, fire behavior, and incident command system.

FIRE will also track law enforcement's wildfire training and qualifications in the Incident Qualifications and Certification System. An Incident Qualifications Card (Red Card) will be provided if applicable. All NWCG training, qualifications, and fitness standards must be adhered to for the appropriate ICS positions.

BIA OJS will provide FIRE with training opportunities applicable to situations that arise during wildfire investigations, which may include witness interviewing, evidence collection, and drug lab/cultivation awareness.

4.1.6. Wildfire Investigation Safety Requirements

All personnel assigned to a wildfire incident must adhere to the personal protective equipment (PPE) requirements, as defined in the BIA Wildland Fire and Aviation Program Management and Operations Guide (Blue Book, current edition, Chapter 9). These requirements are specific to those individuals who are assigned specifically to the incident on the ground. OJS or LEO personnel may also be assigned to the incident on the ground, not in a role associated with the suppression of the fire itself, but functioning in a law enforcement capacity. Wearing the standard OJS/Law enforcement uniform is therefore appropriate. In addition, those individuals performing duties associated with the investigation of a wildfire must wear the appropriate PPE associated with the actual incident.

4.1.7. Crime Reporting

The WeTip Program is a national non-profit organization that allows concerned individuals to provide information regarding crimes (including arson) while remaining totally anonymous. This program is useful because:

- Callers remain anonymous and can trust that the information they provide to law enforcement will remain completely confidential.
- Local witnesses can therefore provide information 24-7, undeterred by lack of trust in local authorities and without fear of retaliation.
- Publically promoting the program can act as a deterrent for criminal behavior.

WeTip has been providing the BIA with anonymous tips since 1997. Callers contact WeTip with information regarding suspected criminal activity related to a particular fire, as a result of an advertisement at the fire or in the local media. Tip information contains names and description of potential suspects. Tips in the past have been distributed to various locations for follow up by either law enforcement or local fire investigators.

The BIA NIFC has entered into an agreement with BIA OJS to place a Special Agent (SA) at NIFC (SA NIFC) in Boise, Idaho, to coordinate wildfire crime investigation and adjudication. WeTip information sent to the BIA from WeTip goes to the SA for evaluation and distribution to the appropriate field level law enforcement officers.

4.1.8. Regional and/or Local Unit SOPs

A Regional or Local SOP may be required to supplement the SOPs established in this Handbook. In some cases, it may be necessary to clearly spell out what is expected and required of LEO and FIRE personnel during a wildfire assignment or other related activities. Local unit SOPs should be approved by signature by fire management and law enforcement.

Regional or Local Unit SOP's should provide or contain basic information about local wildfire investigation protocols, policies, procedures, and training, that are not contained in this handbook:

- Points of Contact (POC) for the SOP
- Names and contact numbers of INVFs and LEOs
- Initial response processes
- Local training needs specific to the tasks at hand
- How wildfire investigations are to be conducted

- Specific jurisdictional concerns and which law enforcement agency should be involved (BIA, Tribal, State, etc.)
- Location of evidence storage facilities
- Regular meeting dates between FIRE and LEO

Prior to beginning an off-unit investigation, the lead investigator needs to obtain copies of any local law enforcement-wildfire investigator SOPs; the host unit's specific fire investigation procedure; any other local policies that relate to fire investigations at the host unit, from the wildfire prevention technician/specialist. Additionally, this information should be clearly defined in the Delegation of Authority.

4.1.9. Request for Law Enforcement Assistance

At a minimum, Law Enforcement assistance will be requested and provided during a wildfire investigation when:

- The INVF is threatened or intimidated in the course of a legitimate jurisdictional investigation. The INVF should withdraw and contact the local Tribal LEO, BIA-OJS or local law enforcement, as appropriate, for assistance. The INVF should not confront a hostile person.
- A determination of criminal activity, CFR violations, federal misdemeanor, or other violations of crimes associated with the fire.
- Other illegal activities are discovered at the fire scene. If suspicious activities are identified at a wildfire scene (dead body/drug activity/abandoned vehicles, etc.)
- The fire(s) occurred within US border areas that have a history of illegal activities (for example portions of Arizona or California).
- There is damage to cultural or natural resources or structures.
- Serial arson is suspected.
- Juveniles are suspected to be involved with fire setting.
- Serious injury/accident or fatality occurred at the fire scene.
- When an Arson Task Force is formed.
- A pattern of Diversion Fires and/or False Alarms is discovered.
- If a taped statement/video footage has been developed during the investigation.

Investigators can request for law enforcement support through: (a) local tribal law enforcement (police/conservation officer); (b) local state/sheriff office; (c) local Special Agent in Charge or (d) Special Agent located at NIFC. This referral will depend on the jurisdiction where the fire occurred

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(trust/non-trust). It can be made by phone, in writing, or in person. (See **Appendix E** for a list of OJS District Offices and contact information.

In those areas where BIA OJS is not the law enforcement agency, please consult your local directory for the nearest LEO.

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CHAPTER 5 – WILDFIRE INVESTIGATION STANDARDS

BIA policy ensures that all wildfires are properly investigated to determine origin and cause. Human-caused wildfires that occur on Indian Lands and cause damage are by definition considered a trespass. Investigations to determine specific cause and origin of all human-caused wildfire occurrences on Indian Trust and/or Restricted Indian Land fall under this policy.

All wildfire investigations occurring on Indian Trust and/or Restricted Indian Land will follow the standards in this Handbook, the NWGC Wildfire Origin and Cause Determinations (FI-210) course, the Wildfire Origin & Cause Determination Handbook (NWCG handbook 1 NFES 1874), and the FBI Handbook of Forensic Service, 2003 edition. The NFPA 921 Guide for Fire Investigations may also be used for additional references and guidance,

5.1 Wildfire Investigation Training Requirements

Wildfire investigators need to be aware of significant changes in the legal system concerning the admissibility of evidence and expert testimony. Various court rulings have set the parameters in determining what is admissible as evidence and who may be recognized as an expert witness. Judges serve as the “Gatekeepers” on expert witness qualifications. An investigator needs to meet the “Daubert Standard” to be recognized as an expert witness. Investigator testimony must be both *relevant* and *reliable*. The BIA recognizes this level of competence is necessary to meet the standards of professional performance.

The National Wildfire Coordinating Group (NWCG), recognizing the need for increasing the level of professionalism in fire investigations, established national training and qualifications for these positions. The certification standards for federal/tribal employees serving as wildfire investigators can be found in the latest version of the NWCG 310-1, Qualifications and Standards for Wildland Fire. The Incident Qualifications Certification System (IQCS) is the official repository for all training and experience. An individual’s record in this system must be maintained in order to meet the “Gatekeepers” standard.

There are specific fire investigator qualifications for those individuals within the Branch of Wildland Fire Management and the Tribal employees working within wildland fire programs. The NWCG has set standard training requirements for these positions, which include attending and successfully completing the following NWCG approved course:

- FI-210 – Wildland Fire Origin and Cause Determination
- SA-130 – Annual safety refresher

In addition, the BIA recommends the following courses to support the development of knowledge and skills required for a wildfire investigator:

- I-100 Introduction to Incident Command Systems
- I-200 Basic ICS: ICS for Single Resources and Initial Attack Resources
- S-130 Firefighter Training
- S-190 Introduction to Wildland Fire Behavior
- S-290 Intermediate Wildland Fire Behavior
- FI-110 Wildland Fire Observations and Origin Scene Protection for First Responders
- Fire Trespass
- Juvenile Fire Setter Intervention or equivalent
- Technical Writing

The Wildfire Investigation positions can be found in the Positions Management System (PMS 310-1), the Wildland Fire Qualifications System Guide, current edition. This guide can be found on the NWCG website, <http://www.nwcg.gov/>.

5.2. Procedural Standards

This section establishes national policies and procedures for wildfire investigations in Indian Country. It assists the INVf in making rational and defensible decisions about authority, responsibility, scene process, and case handling. The intent is to guide the INVf and LEO in sorting out the appropriate actions to take in various ownership situations. Local units may supplement these requirements with additional procedures and policies.

5.2.1 Jurisdiction

Jurisdiction — established by the ownership where the specific point of origin (fire/crime) is located — must be determined before any wildfire investigation begins. When ownership is restricted Indian Land or “Trust,” the BIA/Tribe has jurisdiction to investigate wildfires for origin and cause determination. An exception to this may occur in PL-280 states, where jurisdiction may be assigned exclusively or partially to the state (see Chapter 3 for additional information). If a major crime such as arson is suspected as the cause of a wildfire on Indian Land, contact the local law enforcement jurisdiction immediately.

Indian Land:

Indian Land includes tribal trust, individual allotments, and restricted Indian lands, as well as any other lands under the jurisdiction of the Bureau of Indian Affairs. BIA INVFs have the authority to investigate wildfires originating on these lands. Other Federal, tribal, and state fire investigators qualified under NWCG guidelines may also investigate wildfires upon request by a competent BIA official.

If a wildfire originates on Indian Land, but burns across a non-Indian jurisdiction, the BIA must request permission to continue the investigation from the jurisdictional authority.

Non-Indian Lands:

These include fee lands; tribal fee lands; State, county, city, and other lands not under BIA/Tribal jurisdiction. INVFs have no independent authority to enter to investigate without landowner permission, and they must cooperate with the local jurisdictional authority or state investigator to legitimize an investigation.

If the wildfire originates on non-Indian jurisdiction, but burns across Indian land, the BIA/Tribe must request permission to conduct an investigation from the authority having jurisdiction.

5.3. Investigation Management

The Initial Attack IC (IAIC) has the responsibility to perform the preliminary cause and origin determination, and to decide whether a more thorough investigation is needed. Contributing factors may include the amount of damage done by the fire, potential to recover costs, injuries, fatalities, suspicious circumstances surrounding the investigation and origin, or evidence of other criminal activity at the scene.

The IAIC will establish a chain of custody to protect and secure the general origin area, as well as any potential or suspected evidence, until it can be transferred to an INVF or LEO. When the wildfire investigator begins to process the scene and recognizes that the incident may involve a major crime (as described in the General Crimes Act-18 USC), serious injury, or fatality, the INVF must notify the Bureau of Indian Affairs-Office of Justice Services or the appropriate law enforcement agency immediately. Otherwise, the INVF will continue to process the scene, using the systematic methodology described in NFPA 921.

5.3.1. Investigation Status and Disposition of Files

The status of wildfire investigations based on an origin and cause determination by an INVF will fall into one of three categories:

Closed Investigation – Referred

Closed Investigation – Solved

Closed Investigation – Unsolved

See the Terminology section of this handbook for the definition of these terms. All other case disposition categories will be established by law enforcement.

The investigation files developed during a wildfire investigation contain sensitive and confidential information. The INVF must retain all original investigation files, including reports, field notes and/or supporting documents collected or developed during the investigation. When there is a determination that criminal activity is involved, the investigation must be reported and referred to the appropriate law enforcement office. The documents provided in the referral process must be copies of the originals, never the original case files. The Line Officer's Summary must provide sufficient information pertaining to the findings, but not contain any sensitive information.

The following guidelines are established for all local unit wildfire investigation reports and records:

Original Files BIA/Tribal:

- In all circumstances, regardless of ownership, the original wildfire investigation report files will be maintained and remain with the INVF.
- The original files will be kept in a secured locked storage cabinet.
- If the INVF retires or leaves the agency/tribe, the original files will be maintained at the BIA/Tribe.

Original Files — Casual Hires:

- If a casual hire has been brought in to investigate origin and cause, the original case report will be left with Regional Wildland Urban Interface Specialist/Prevention Specialist. The casual hire may retain a copy of the file for further reference (i.e., in court).
- Files will be kept in a secured locked storage cabinet.

Original Files — Cooperating Agencies:

- The INVF who generates the wildfire investigation report will provide the original to the host Agency/Tribe and retain a copy for future reference.
- The report will be placed in a secured locked storage cabinet.
- Each Agency/Tribe may establish additional requirements at their respective home units.

Copies:

- In a criminal wildfire investigation on Indian land, copies of the INVF report will be given to the BIA-OJS Special Agent and/or the Tribal police/conservation officer, as directed by the BIA-OJS Special Agent. This report may be used to support criminal charges, either in Federal or Tribal courts.

In a criminal wildfire investigation on non-Indian land, copies of the INVF report will be given to the appropriate law enforcement agency. This report may be used to support criminal charges in a state or local court.

During a large fire investigation effort, numerous investigation files are developed, and the security of these files becomes an area of concern.

All open investigation files generated by a fire investigation team must be kept in secure a location at all times. This may be achieved by several means:

- All original investigation files are retained by the lead fire investigator.
- Appointment of a designated investigation files manager.
- Storing all investigation files in a locked storage container, such as a lockable file cabinet, with access limited to the designated investigation file manager.

- Temporarily storing investigation files by the designated file manager and kept on his/her person.

The transfer of investigation files between the outgoing team and the incoming team must occur between the two investigation file managers. Chain of custody documentation must accompany the transfer of all documentation, along with any evidence attached.

Upon exit of the outgoing team, the designated investigation file manager will provide a log of all investigations conducted. The log will include dates of incident, specific cause, referral status, and any follow up required by the home unit.

In all instances, the investigator must remember that the investigation files are law enforcement documents. They are protected under the law enforcement exemptions of the Freedom of Information Act (FOIA) as long as it is an open investigation. Once the investigation is closed it is subject to FOIA.

Investigations involving negligence, where property damage occurred on Indian Land, regardless of the ownership of the point of origin, criminal charges will take precedence over civil charges. The INVf will meet with the LEO or local law enforcement to be advised of the status of the investigation. If there are criminal charges or pending criminal charges, the INVf will notify the Line Office or Regional Director. The INVf must file a clean copy of the original with the Line Officer having jurisdiction, to be used in pursuit of damage claims (fire trespass) once the criminal case is closed.

For trespass investigation handling, see 53 IAM, Volume 7, Trespass.

Permanent storage of all original investigative reports at the local unit must follow the established Trust Record guidelines.

5.4. Wildfire Investigation

A wildfire investigation requires the application of a systematic methodology. The investigation includes the documentation of unbiased facts through the competent use of science, technical skill, and experience to determine the origin and cause of the wildfire. It may also include interaction with people and assessing physical objects within the wildfire scene. Failure to adhere to professional standards in preparing and documenting the findings of a complete and thorough origin and cause determination may subject the INVf's methods, competence, and qualifications to attack by a defense

attorney, which could result in loss of credibility, exclusion of testimony, and other adverse legal consequence.

5.4.1. Origin and Cause Determination

An origin and cause determination will be conducted on every wildfire occurring on Trust land, either by initial attack resources or by an INVF. The IAIC, upon arrival at the fire scene, has the responsibility to secure the general origin area and make the origin and cause determination if an INVF is not present. Additionally it is the responsibility of the IAIC to request the involvement of an INVF for all wildfires meeting at least one of the criteria below:

- Loss has occurred to property, forest, or agricultural resources.
- Juvenile fire setting is apparent.
- A history of serial arson is present on the unit or is suspected.
- Criminal activity is involved.
- Personal injury has been sustained.

The IAIC must document the suppression actions in the DI-1202 Wildland Fire Report, which will become an attachment to the wildfire investigation report. This documentation may be superseded if the local policy is to fully investigate all wildland fire occurrences to determine the origin and cause, and to report these findings in a wildfire investigation report.

5.4.2. Systematic Approach

Following the procedures outlined in NFPA 921 Guide for Fire and Explosion Investigations (current edition) and NWCG Handbook 1 (PMS 412-1) will improve the probability of reaching sound conclusions. All wildfire investigations will be conducted in a manner that adapts the investigation to fit the circumstances. The investigation should be handled accordingly and any deviations from these procedures are not necessarily wrong or inferior, but they do need to be justified. The professional operating procedures required for conducting an investigation on Tribal Trust lands include:

- Protect the area of origin and provide for scene security.
- Assess the scope of the investigation and request assistance, if needed.
- Conduct a thorough examination of the scene and identify/interview witnesses.
- Identify, document, collect, and preserve evidence.
- Complete a carefully written report and specify follow-up actions.

5.4.3. Scientific Method:

This is the NFPA 921 definition of the scientific method: “The systematic pursuit of knowledge involving the recognition and formulation of a problem, the collection of data through observation and experiment, and the formulation and testing of a hypothesis.”

- A successful wildfire investigation relies on a systematic approach, based on attention to relevant details. The first step is to determine the origin(s), and then investigate the cause. In establishing origin and cause, the INVF will document the circumstances, conditions, or actions that involve a competent ignition source and fuel, together.
- The Daubert Standard³ — as identified in section 18.6.1 of NFPA 921 — dictates that any hypothesis formed from an analysis of the data collected in an investigation must stand the challenge of a reasonable examination by the investigator applying the hypothesis, or an examination by others.
- Data collection, analysis, hypothesis development, testing, conclusions, and reporting must all conform to the methodology described in NFPA 921.

5.4.4. Collection and Transfer of Evidence

The successful investigation and prosecution of crimes require, in most cases, the collection, preservation, and forensic analysis of evidence. Forensic analysis of evidence is often crucial in determining guilt or innocence. The collecting, processing, and storing of evidence must follow the FBI Handbook of Forensic Services guidelines. The wildfire investigator needs to become familiar with the rules of evidence as they regulate the admissibility of proof at a trial (See NFPA 921 – 11.5.1.1).

Photographs and other illustrative forms of evidence are crucial elements in the INVF’s documentation of the wildfire investigation. The INVF should utilize the guidance provided in Chapter 11 & 15 of NFPA 921.

³ *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786 (1993).

Other important details regarding evidence collection and transfer are covered in Chapter 4, Section 4.2 OJS – FIRE Standard Operating Procedures.

5.4.5. Wildfire Investigation Report

The wildfire investigation report effectively communicates the findings, observations, methodologies, analyses, and final determination of the wildfire origin and cause. An INVf (or Trainee) must complete this report for all wildfire investigations.

INVfs must treat the Investigation Report as a sensitive and confidential law enforcement document, not automatically subject to a Freedom of Information Act (FOIA) request. Distribution of this report to other than law enforcement officials requires that the document meet all Privacy Act requirements.

In wildfire incidents where criminal activity or wildfire trespass is identified, the wildfire investigation report will become a supplemental report to the law enforcement case or trespass report. In addition to the wildfire investigation policies and procedures established in this Handbook, the INVf must predetermine and document any local unit protocol for report disposition.

The Privacy Act requirements are the same in situations where wildfire trespass is suspected. The trespass report may contain law enforcement information of a sensitive nature, including suspect and witness personal data. Both FOIA and Privacy Act requirements must be met in the distribution of any information regarding these incidents. As a safeguard, INVfs should consult with law enforcement, the FOIA Coordinator and/or Officer, and/or the Solicitors Office.

The report's content needs to be kept as concise as possible while providing enough information to support the findings. At a minimum the report must contain the following – all of which can be found on the resource DVD:

- Confidential Cover Page
 - Wildfire Investigation Information Page
- Investigation Summary
 - Investigative Actions
 - Conclusion
 - Investigation Status
 - Property and Evidence Collected
 - Contact Information

- Dispatch Information
- Damages and Cost Recovery
- Witness Statements
 - Voluntary Witness Form
- Reports of Interviews
 - Typed or Hand Written Interviews
- List of Attachments
- Copies of Report Distributed to

A wildfire investigation may require several attachments, supplemental forms and documents that may need to be referenced in a fire investigation report. These may include but are not limited to:

- Photographs & Logs (photographs collected by other than INVF)
- Origin and Cause Field Reports
- Property and Evidence Logs
- Lightning detection data (as applicable)
- Dispatch records and information
- Measurements converted to diagram (when required)
- Incident cost summary
- List of contacts and information (investigators, IA forces, PIO, law enforcement personnel, witnesses)
- Incident information (including weather data)
- ICS-214 Unit Log
- Canine report (as applicable)
- Typed or written notes
- Trespass Damage Report (as applicable)
- Reports from Law Enforcement Agencies (if applicable).

5.5. Digital Photography

Photographic evidence greatly enhances any criminal wildfire investigation by providing graphic information about the scene, of evidence or natural resource damages. It also provides prosecutors with the visual evidence they need to successfully prosecute cases. In most cases, a crime scene photographer or specialist will not be available to go to the scene, so taking photographs of the scene is a fundamental responsibility of the INVF. Prosecutors rely on these photographs to graphically document and present evidence of burn patterns, burn indicators, degree of damage, and resource damage resulting from the wildfire.

To ensure the highest integrity in the use of digital imaging evidence in court, FIRE has adopted the following policies and standard operating procedures:

5.5.1. Equipment

- Only government (or tribally) approved or issued digital cameras and video cameras will be used for official wildfire investigation purposes.
- Existing government (or tribally) approved cameras will have at a minimum 5.0 megapixels, on camera viewer, close up capability, flash, and a removable image memory card or device (CD) of at least 256 MB.
- Any new government (or tribal) camera equipment purchased will have at a minimum 8.0 megapixels, on-camera viewer, close up capability, flash and a removable image memory card or device (CD) of at least 256 MB.
- A government (or tribally) approved video camera will have at a minimum of 5.0 megapixels, on-camera viewer, close up capability, on/off audio capability, and a removable image memory card or device (CD, DVD) of at least 16 MB (megabytes).
- If a second opinion is requested for a wildfire investigation, the agency standard from the sending agency will apply. If sending agency has no standard, or if the second opinion is provided by a consultant, the BIA agency standard will apply. The INVF will:
 - ensure the issued digital camera is in proper working order and be familiar with its proper operation;
 - use a clean image memory card or device (CD, DVD) for each investigation;
 - check the date and time on the camera for accuracy (appropriate time zone etc...) before each use.
 - set the camera's date stamp correctly so that it will ***not*** be printed on the digital images;
 - set the camera at "automatic" for exposure, flash, and focus (compensation may be necessary in some situations such as low light, sun glare, etc.);
 - set the storage control or photo quality at a minimum of 3.1 photo mega pixel (MP) or "high quality" if storage device MP allows;
 - use an evidence ruler when taking close-up photographs — a 90-degree ruler is optimal.

Cellular telephone photography is prohibited from use for an investigation.

5.5.2 Procedures

- The Lead INVFF will designate an individual on each incident to be responsible for the photography and documentation of the fire and/or trespass scene.
- All photographs taken at the incident will be taken by a fully qualified INVFF or trainee.
- The INVFF or trainee will use the photo log (**BIA Fire Investigation Field Report – Photo Log**, see Resource DVD attached to this handbook) to record all fire and/or trespass scene photos.
- All information on the photo log will be completed for each incident and photograph taken.
- All photographs taken at the incident will be retained. Photographically faulty images will not be deleted. Only photographs that are relevant and of print quality will be used for the investigative report.

5.5.3. Photo Processing

- The unaltered images captured at the incident will be downloaded or copied from the camera without opening to a CD/DVD or a computer file that has limited access.
- Only government or tribal approved and issued computers will be used.
- The CD/DVD to be used will be write-once-read-many-times (WORM) disks – CD/DVD-R. The use of CD-RW and DVD-RW is prohibited.
- When transferring the data from the cameras memory device to the CD/DVD a “closed” disc or session will be used.
- The CD will be labeled with the appropriate investigation information.
- The camera’s memory card will be removed and placed into the appropriate evidence container and sealed upon validation of transfer of images to CD/DVD or limited access computer file.
- The CD/DVD will become the “Master Negative” and serve as the permanent record.
- The files on the master negative CD should be copied, without opening, onto another CD that becomes the working record, the “negative duplicate.”

- The master negative should be placed into an evidence envelope, identifying the investigation information and sealed.
- All pertinent investigation information should be included on the evidence envelope and envelope should be placed in secure evidence storage locker.
- The master negative CD will remain in the custody of the INVF responsible for the investigation along with the original investigation files. If a CD is to be reviewed beyond the custody of the original INVF, a new CD should be made from the negative duplicate CD, such as for the investigating officer, prosecutor, defense attorney, etc.
- All printing of photographs will be generated from the negative duplicate.
- A thumbnail print of all photos taken at the incident will be included and created for each incident.
- Additional large prints may be produced as needed for the investigation.

In addition, the Federal Rule of Evidence, Article X (Contents of Writings, Recordings and Photographs) will be the guiding principles for digital imagery use.

5.6. Juveniles

Fire setting by juveniles and children is a complex issue, beginning with the age of the juvenile or child at the time of the fire. **Law enforcement involvement is required whenever there is evidence that juveniles or children are involved in fire setting.**

Interviewing juveniles at the fire scene is encouraged, as most of the time they will have seen something or someone that was at the origin or nearby. When INVFs are interviewing juveniles or children, it is important that they adhere to the following guidelines:

- Use non-threatening words and body language when conducting interviews with young children.
- Do not ask leading questions (what you want them to say).
- Inquire and document who their parents or legal guardians are and where they can be contacted.
- Request the parent or legal guardian to be there during the interview if they are present or nearby.
- If the juvenile or child admits to starting the fire during an interview, document what was said and contact local law

enforcement with the information. Law enforcement will conduct a follow-up interview/interrogation.

- If criminal intent is determined, the investigation is then a law enforcement matter.
- Research tribal codes to determine if any are in place to address the issue.
- When documenting a juvenile in reports, use the initials (not the name) of the juvenile and in parenthesis the juvenile's age and sex (for example, 10yr/mj/fj).

5.7. Youth Fire Setter Intervention

The Bureau of Indian Affairs has developed a Youth Fire Setter Intervention Program (YFSIP) to provide a framework for evaluating the level of intent for setting a fire and establishing appropriate follow-up action. The Bureau is committed to working with tribes to address fire-setting behaviors and to encourage community-based intervention over incarceration whenever possible.

A Youth Fire Setter Intervention curriculum (see resource DVD) has been developed to provide set-by-step guidance regarding the process of developing and implementing YFSIP at the reservation level. Support may be provided to get the program started. Please contact your Regional/WUI Prevention Specialist for further information.

5.8. Fire Occurrence Reporting

The Fire Occurrence Reporting System (FORS) contains the Wildland Fire Management Information System (WFMI) Fire Reporting module, WFMI weather module, and the WFMI Lightning Detection module. WFMI is the Bureau's official system of record for wildfire occurrence statistics.

For all local incidents — wildfires, natural outs, support actions, prescribed fire, wildland fire use, and false alarms – INVFs must prepare an Individual Fire Report and archive it as documentation. Reporting requirements vary by incident type; they are described in the BIA Fire Occurrence Reporting System Users Guide, Chapter 4, Section F.

5.9. Importance of Cause Classes

Identifying the specific cause of a wildfire is an important task that should never be taken lightly. This information is used both statistically and strategically by the fire management organization, and by the prevention program to design mitigation strategies for the local unit.

5.10. Fire Reporting Requirements and the Coordination between INVF and Fire Crews

Coordination between the fire investigator and the local fire crew regarding origin and cause of a wildfire is critical. The fire crew typically generates the DI 1202 Fire Report, which is an official record. Making sure that the DI 1202 fire report and the fire investigation report both contain the same information about the specific cause of a wildfire is essential to the successful prosecution of any wildfire investigation. Future prevention and mitigation strategies are also dependent on high-quality origin and cause data.

5.11. Fire Reporting Requirements when Fire Trespass has Occurred

Fire trespass may require additional field work and follow up before sufficient data is obtained to populate the appropriate fields in WFMI. The information provided by the fire investigator is input by the local unit designated official.

5.12. Wildfire Investigation Kit

A wildfire investigation kit is a required item for all INVFs. The kit should include all of the items needed to conduct a thorough investigation (see **Appendix F**). Additional items may be necessary. For example, a unique situation may require a phone call to Federal, State, or local crimes labs concerning the storage and transportation of samples, or to obtain specialized equipment.

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CHAPTER 6 – OPERATIONAL STRATEGIES AND SUPPORT

Even the most experienced wildfire investigator must rely on assistance from a variety of specialty disciplines for successful investigation resolution. Experts such as forensic scientists, fire behavior analysts, and many others can provide critical support in the application of scientific disciplines as they apply to legal issues. Anticipating the need for technical assistance and prior availability can be paramount in pursuing a crucial investigation. The INVF will often need to initiate the involvement of these specialists and develop partnerships when taking the investigation forward. (See section 14.5 of NFPA 921 Guide of Fire and Explosion Investigations for additional information.)

6.1. Prioritizing Workload

The investigator is often confronted with complex issues related to fractionated and/or unknown land ownerships, multiple ignitions, extreme fire behavior, large land base, excessive travel distances involved, and many others. When additional investigators are not available to help with the workload required to complete a competent investigation, it is advisable to seek support from a variety of sources. Law enforcement personnel could be ordered to assist with witness interviews, posting of WeTip, securing the scene at new ignitions not yet visited by the investigator, securing transporting and managing physical evidence, and many other duties typically performed by the investigator. It may be possible to resource order additional personnel who can assist with photography, mapping, land ownership status determinations, measurements, record keeping, GPS data collection, and many other functions. These individuals require close supervision and on-the-job training by the investigator to maintain the high standards required for criminal case preparation.

When workload pressures become overwhelming, due to investigation complexity and/or the need to deal with multiple fires, it is important to remain in control of the situation until additional help arrives. Scene preservation, chain of custody issues, strict attention to systematic methodology, thorough and detailed recording of observations are always mandatory. There is a tendency to take “short cuts” or to abandon a potential crime scene in lieu of a “new” ignition that is currently under initial attack. Every situation is unique, but it is strongly recommended as a general rule to stay with the fire you have been assigned until all field work is completed.

It may be possible to return to that fire later to complete some of the reference point work, measurements, rule outs, etc. All matters pertaining to evidence, lane searches, point of origin, micro burn indicators, and others need to be completed prior to dispatch to an additional fire.

Organization and delegation of assignments prior to the incident will improve the overall efficiency of the investigation. Individuals should be pre-assigned specific tasks from the Field Investigation Checklist (see Resource DVD).

6.2. Recognizing the Need for Additional Assistance

In the preparation of origin and cause determination and report writing, many circumstances come up that require assistance outside the home unit. Local line officers and/or fire managers often do not detect these circumstances as they are occurring.

It is the responsibility of the local unit to recognize the need for outside assistance. The local unit should use the following list as guidelines for when to request outside wildfire and/or trespass investigation preparation assistance:

- History of fire occurrence over a specific timeframe.
- Excessive fire occurrence beyond the ability of local staff.
- Local unit has no qualified staff to perform investigation duties.
- Extensive resource, property, or cultural loss/damage.
- Injuries or fatalities incurred on the fire incident.
- Evidence of serial arson.
- Fires involving multiple ownerships.
- Complex fire scene issues or the need for special investigation skills.

6.3. Wildfire Investigation Teams/Task Forces

The increased frequency of intentional ignitions in a short amount of time has led to the implementation of large-scale investigations and Arson Task Forces. Law Enforcement will be contacted at the onset of the fire activity by the local unit or the regional office. All activities during this operation will be closely coordinated with the appropriate law enforcement agency. In some cases, Law Enforcement will provide the leadership and coordination of the team. In these situations, FIRE will provide the technical expertise for origin and cause determination. Any criminal investigative work related to the wildfire incident will be conducted by law enforcement.

FIRE staff may play lead roles in determining origin and cause, fire behavior, and other fire specific issues. When that is the case, they must notify and coordinate activities with the appropriate law enforcement agency and request an LEO point of contact for the Team. At a minimum, the Team will notify Law Enforcement of suspected criminal activity. Developing fire/law enforcement partnerships at the onset of the team formation is paramount to the success of the entire investigation process. For example, team leadership may change from a fire to a law enforcement function, or there may be a unified command between both functions. If at all possible, it is advisable to staff these large-scale investigation efforts with certified INTM members, especially in the lead role.

The local unit may request, through the Regional Office, assistance from the National Office in developing large-scale investigations. The appropriate line officer should be briefed on the mobilization and accomplishments of the team, and formal written delegation-of-authorities should be secured prior to implementation of the team.

A Geographic Area Coordinating Center (GACC) may also mobilize the team internally. The GACC will notify the National Interagency Coordinating Center (NICC) of the commitment. If the Team Leader is **not** located in the requesting Geographic Area, the GACC will process the order in NICC. All resource orders will be processed through established ordering channels, from the requesting unit through the GACC to NICC. The local unit should coordinate this activity with the Regional WUI/Prevention Specialist.

6.3.1. BIA Wildfire Investigation Team Requirements

The composition of a wildfire investigation team can be a very dynamic thing. The team at any given time may have special needs requiring expertise from a variety of fields. The BIA has determined the minimum composition of a wildfire investigation team (FINV) to include the following:

- 1 Task Force Leader – must be an NWCG Qualified INVF, currency required, or Law Enforcement Official (Sergeant or higher or detective).
- 2 Lead Fire Investigators – must be an NWCG-Qualified INVF, currency required.
- No more than a 3 to 1 ratio of trainees to Lead INVF.
- Local Law Enforcement Representative – may be a collateral duty.

Additional positions may be requested to support the efforts of the team.

6.3.2. Preplanning and Expectations

Upon ordering an FINV Team, the requesting unit needs to communicate with the BIA/Tribal Law Enforcement and secure their involvement. Coordinating with Law Enforcement is critical to the overall success of the FINV Team. The requesting unit should identify a Liaison Officer to work with the incoming team.

The requesting unit needs to understand the local unit wildfire investigation policies and procedures and to provide the following to the Arson Task Force Team:

- Objectives for the fire investigation team.
- Basic logistical support and arrangements for the FINV Team before they arrive, including office space, phone lines, photocopier, and facility security protocols.
- Details regarding fire investigation administrative support.
- Access for the Incident Commander/Team Leader to the Liaison Officer for clarification on items for discussion. The Incident Commander/Team Leader must have the ability to negotiate objectives.
- A comprehensive briefing on the situation, prior to assumption of command, by the Liaison Officer. Any maps, special instructions, and related information should be available at that briefing. The Line Officer should expect to give the Task Force at least an hour of undivided attention.
- A representative who is available to the Task Force (if the Liaison Officer is not) to make decisions.
- Local subordinates who understand the Liaison Officer's objectives and support them.

6.3.3. Task Force Responsibilities

The Arson Task Force Team must be prepared to accept the following responsibilities:

- Attention to Safety as a primary concern.
- Agreement on the objectives between the Incident Commander/Team Leader and the requesting unit.
- Discussion on the feasibility of accomplishing objectives.
- Assistance, as requested, in developing documentation of those objectives.

- Professional conduct from Task Force members assigned to the incident.
- Daily meetings with the Incident Commander/Team Leader. Frequent information transfer from the Task Force to those individuals the Liaison Officer has designated.
- An understanding of the local socio-economic and political concerns the Liaison Officer has to deal with.
- A complete and comprehensive financial and property accountability package.
- Documentation of the decisions made by the Task Force, including a well-organized final close out package.
- Efficient use of the resources assigned to the incident.
- Attention to Human Resource issues, with zero tolerance for discriminatory or demeaning actions.

If the incident involves criminal matters, the information shared may be limited.

6.3.4. Delegation of Authority

The line officer of the host unit needs to prepare the delegation of authority in advance of the investigation team's arrival, if possible. (See Appendix 11-2, page 11-38 in the current edition of the BIA Wildland Fire and Aviation Program Management and Operations Guide and/or Appendix G of this document for examples.)

6.3.5. After Action Review (AAR)

The Team Leader will conduct an AAR for the investigation assignment, as described in the BIA Wildland Fire and Aviation Program Management Guide (Bluebook), Chapter 9, Section K: *Reviews and Investigation Procedures*, page 9-28 thru 9-29. Also see the *Incident Response Pocket Guide*, page 19. The AAR will be documented and included in the closeout package.

6.3.6. Closeout

A closeout meeting with the requesting unit — attended by members from the investigation team and the agency line officer and/or tribe(s), or designee, and the appropriate agency and/or tribal(s) staff — will be held at the end of the team assignment. The closeout meeting will cover situation background, summary of team actions, summary of team findings, summary of the

recommendations along with follow up needed, and investigation file disposition.

In addition, the investigation team will prepare a final close out document, containing all pertinent non-sensitive information regarding the team's activities, for the requesting unit. (See Appendix H for outline.)

6.3.7. Transition Between Teams

A smooth transition between the current and replacement wildfire investigation teams is necessary to ensure the success of the new team. Anticipation of future investigation needs during and after current rotation is essential. At least two days of overlap with current team should be planned for in the transition. The current team structure should be analyzed in relation to meeting host unit objectives, and recommendations provided to the host unit for staffing and resource needs of the incoming team. A work schedule during this overlap should be developed to allow the original team to lead on the first day and the incoming team to take over the lead on the second day. This kind of transition will allow the incoming team the opportunity to shadow the current team while in operation mode, review investigation files, identify new needs, receive handoff investigation files, maintain chain of custody, and develop their own plan of operation. If possible, the incoming team leader should attend the outgoing team's closeout meeting with the host unit.

6.4. Communication

As with any activity, communication with external audiences must be very carefully considered. Information collected at the wildfire scene must be held in the utmost confidence before and during the wildfire investigation. If there is evidence that a crime has been committed, the INVF must contact the appropriate law enforcement office immediately to obtain further guidance. At that time, no information may be released to any external audience. The LEO will determine what and when information can be released. All personnel involved in the investigation must understand the importance of maintaining information in confidence.

The Agency Administrator may often inquire about the status of a fire/ fire trespass investigation. The information sought generally focuses on the investigators' responsibilities pertaining to trespass. In cases where criminal activity is involved, the trespass case will be subordinate to the criminal case. The trespass damages, however, may be attached to the criminal case for restitution purposes. Should the criminal case decline to incorporate the

trespass damages, a civil case seeking damage recovery may be pursued once the criminal case has been resolved. Specific information regarding the criminal case may not be released to the Agency Administrator or to any other agency/tribal personnel from law enforcement.

6.4.1. Operational Communications

Operational communications are critical to ensure the safety of all individuals involved in a wildfire incident. The use of radios, both mobile and handheld, is common in the FIRE community. With the expansion of coverage areas, cell phone use is becoming more popular. The primary function of these communications system is to maintain contact with the wildland fire personnel, including investigators, local wildland fire departments, Volunteer Fire Departments, and law enforcement personnel.

The most effective communications system is face to face to contact. Because this is not always possible or practical, the situation will generally dictate the choice of the communications system that will meet the needs of the investigation. Encrypted radio systems are available if communication security is a concern. If this issue arises, it is recommended that investigators seek the guidance of a communication specialist.

6.5. Use of Weather Data

Weather data in combination with topography and fuel elements affect the formation of fire direction indicators and are crucial to properly interpreting a wildfire's burn pattern. The fire investigator should personally collect weather data if assigned to the fire during initial attack. It is often necessary for the fire investigator to assemble fire data from sources such as dispatch centers, initial attack suppression forces, weather stations, Remote Automated Weather Stations (RAWS), any on-scene witnesses, and others. If possible, hourly or more frequent observations from the closest weather station that covers the ignition area should be obtained. INVF's can use weather and other data to calculate wildfire ignition and behavior potentials. Fire behavior analysis and fire predictive modeling may also play a pivotal role in determining origin and cause and, later, in case preparation.

6.6. Pattern Analysis

The analytical approach to fire investigation may link an individual fire to other fires in the area. Reoccurring fires may be the result of an accident or, possibly, deliberate ignitions. An example of accidental reoccurring fire might be a piece of defective ditch mowing equipment that sparks an ignition

occasionally. But there may also be a pattern of reoccurring incendiary ignitions that are part of some other crime concealment or serial arson. Therefore, the origin and cause investigator must consider whether the fire under investigation could be connected in some way to other local fires — keeping in mind that those other fires could be structure fires.

A Geographic Information Systems (GIS) Specialist may be very helpful during this process. This resource — recommended when multiple fires are occurring or serial arson is suspected — can provide valuable assistance in organizing, cataloging, cross referencing, and evaluating the information generated through the investigation, and to advising the team leader or lead investigator about data collection and storage.

A GIS Specialist could be included on the investigative team to produce maps of the fire(s) and diagrams of the origin scene(s). Spatial locations of fires or certain attributes may reveal patterns or links with one another. See Resource DVD for an example of the matrix spreadsheet that may be useful in identifying patterns. Reoccurring fire setting patterns may be recognizable by time of day, day of the week, proximity to schools, proximity to a suspect's residence, or other factors. If possible these specialists should have fire investigation or law enforcement training. The data analyzed and the results displayed must remain confidential and be treated as investigation/law enforcement documents.

6.7. The Role and Use of the Fire Behavior Analyst

Origin and cause investigators are often confronted with complex issues beyond the scope of their training. The investigator could solicit help from many and varied disciplines to aid in case preparation or case resolution. Understanding the basic principles of fire behavior is critical. The ability to recreate probable fire spread, based on knowledge of these principles, will greatly assist the investigator in determining ignition sources, fire direction indicators, and overall burn patterns.

It is recommended that a qualified Fire Behavior Analyst (FBAN) be consulted regularly for help on case preparation. The FBAN can predict how far and fast the fire has moved since ignition. With accurate weather data, the FBAN can determine the Rate of Spread (ROS), Spotting Distance (SD), and Probability of Ignition (PI) in a receptive fuel bed. From this, the FBAN can determine the size and shape of the fire for a given burning period in a particular fuel bed and topography. The more accurate the weather data, the more accurate the FBAN will be in fire behavior predictions. It is essential that weather data, particularly any major changes in conditions, be recorded

on site from initial attack (IA) on. The INVF needs to interview IA crews for weather conditions that were present at the point of arrival on the scene.

If no local weather observations are available, the FBAN can use the daily fire weather general forecast and data from RAWS. Because the daily fire weather general forecasts and RAWS stations may not totally reflect the weather at the general origin site, on-site weather is the most accurate for fire behavior predictions.

ROS is used to determine how far a fire has advanced. ROS predictions, based on fuel models (FM) and weather conditions, can clarify the general origin area, and estimates of back distance can be determined.

Probability of Ignition (PI) is used to determine the intensity needed for ignition of the fuels at a particular site. Could the fire have been started from a cigarette, sparks, smoldering material, etc.? Would the FM for a site have required a more intensive ignition source? The time of ignition could be estimated from weather conditions and FM, based on the spread distance of the fire.

If aerial photos of the fire are available, the FBAN could determine the general origin of the fire by observing the spread pattern of the fire. From spread pattern analysis the FBAN could determine the chances that there were multiple ignition points. Could multiple ignitions be a result of spot fires or additional ignition sites?

If possible, the FBAN should review the fire area on the site. The FBAN can determine how topography would have influenced fire spread and the effect of topography on local weather conditions. Fire behavior predictions can be determined from off-site locations, but may not be as accurate as predictions made on site.

6.8. Use of Prevention Teams

Staff from the local unit or off unit Prevention Teams can be a valuable resource for the wildfire investigator and/or task force. The most useful functions involve interacting with local communities, community leaders, children, schools, Tribal Councils, elder groups, and other local groups. Valuable information is often obtained from these sources due to the non-threatening appearance of the Prevention Teams.

The position of Public Information Officer has been utilized to interface effectively with media. This position not only promotes awareness of the

current conditions and situation, but also informs the public regarding the WeTip program. Members of the Prevention Team may also provide verbal and written updates to the local unit and/or the public.

The Prevention Team is not privy to any of the criminal information while an investigation is ongoing.

6.9. Canine (K-9) Use

The use of bloodhounds for assistance in origin and cause determination of wildfires on Tribal lands has proven very successful. Highly trained dogs and a handler proficient in origin and cause determination can assist with identification of suspects or witnesses, identify direction of travel by a perpetrator, uncover additional evidence, ascertain vehicle involvement or use, and confirm or contradict witness or suspect statements. Local law enforcement involvement is essential prior to and during the use of dogs. It is recommended that several fire investigators or trainees work with the K-9 handler(s). General considerations when a K-9 team is involved are:

- Have pre-planned assignments for tasks.
- Remember that tracking can provide information such as direction of travel, even if suspects are not present.
- Witness interviews should be conducted as early as possible with all witnesses on the wildfire scene.
- K-9 handler should work with burn indicator specialist. Together they can establish a perimeter (place barrier tape) and look for evidence. This includes a walk-around that may be more than just a perimeter of the fire itself. This may be a single file walk-around. Mark evidence with white flags.
- K-9 handler will make final decision about whether tracking is to be done.
- Law enforcement should be present before a K-9 team is used.
- Assign someone to deal with incoming or already present locals and media. This person can also assist with access to the scene and where to park incoming fire equipment and vehicles. This may involve getting bystanders out of immediate areas of interest, to keep them from contaminating scent.
- Once the scene is secure (done by K-9 handler and indicator specialist), and initial interviews are complete then take a break, step back, and have a briefing with all team members including PD in order to compare observations.

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- The K-9 handler will conduct all tracking operations with dogs. A K-9 report will be generated by the handler, to be included as a supplement in the investigation.

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CHAPTER 7 – JURISDICTIONAL ISSUES

Among the issues that the wildfire investigator must consider are land ownership status and proximity to trust and/or allotted lands. The wildfire investigator must establish cooperative working relationships with all nearby ownerships outside the jurisdiction of the BIA. Identification of the ownership of such land is necessary to adequately determine origin and cause of any wildfire that may not start on Indian Land, but that may burn onto or threaten Indian Land.

7.1 Tribal Court System

The role of the Tribal Court System is to enforce tribal law, both civil and criminal, as set forth by each tribe. The Tribal Courts hear misdemeanor cases, but not felony cases. Most tribal courts allow both attorneys and “lay advocates” (lay advocates are usually tribal members who have become knowledgeable about tribal law and not an attorney) to represent persons. In criminal cases, these courts can preside only over native peoples; in civil cases, they can preside over both natives and non-natives. The Tribal Law and Order Act give tribes the authority to sentence an individual for up to three years in a tribal correctional facility.

7.2. Courts of Indian Offenses (CFR Court)

Some tribes have chosen not to enact their own codes, but to operate under the Code of Indian Offenses found in the Code of Federal Regulations (CFR). The jurisdiction authority for these courts is also found in the CFR. These courts are similar to tribal courts, but they operate within the BIA Office of Justice Services, which is financially responsible for administering them. CFR courts are restricted from hearing internal tribal disputes, such as election disputes or political disputes and from hearing disputes involving non-Indian parties unless those parties consent to be subject to the CFR court's authority. The BIA provides a liaison between OJS and the CFR Court system to provide criminal and civil case guidance. For a list of the locations of these courts within the BIA Regions, see 25 CFR §11.100.

7.3. Priorities for Investigation

BIA and/or Tribal wildfire investigators are primarily responsible for determining the origin and cause of those wildfires that occur on or burn onto lands under the jurisdiction of the BIA. Their authority is limited to fires that occur on lands under the jurisdiction of the BIA. Wildfires that occur on

lands adjacent to Indian Lands and pose a threat to those Indian Lands may be investigated as requested by the jurisdictional authority. Many Tribes and BIA Agencies have established cooperative agreements to address the working relationships between the two parties regarding these fires. Cooperative agreements may also provide the wildfire investigator the flexibility to operate on lands outside the jurisdiction of the BIA. Wildfire investigators must become familiar with all agreements that exist within the area where they are working and establish solid working relationships with all cooperators.

The priorities for all BIA and/or Tribal wildfire investigations are in the following order:

- Wildfires originating on Indian Land.
- Wildfires originating on Non-Indian land that burn onto Indian Land.
- Wildfires originating on Non-Indian land that threatens to burn onto Indian Land (cooperative agreements in place to address wildfire investigation).
- Wildfires originating on Non-Indian Land that threatens to burn onto Indian Land (no cooperative agreement in place to address wildfire investigation).
- Wildfires originating on Non-Indian Land that are not threatening to burn onto Indian Land.

Initiating a trespass investigation may also become a priority if there is evidence of trespass.

7.4. Contract and Compact Programs

Many Tribes have chosen to contract or compact fire and/or law enforcement services. It is important for both the fire and law enforcement partners involved in fire-related incidents to identify which services are retained by the BIA or are under Tribal authority. In some cases, all or portions of an individual program may be assumed by a Tribe under PL -638 contract. Understanding this situation is critical to the success of any wildfire investigation. The investigator and law enforcement personnel must identify the appropriate contact in order to determine the party responsible for the legal process. Those tribes that have contracted or compacted law enforcement services are responsible for enforcing all applicable laws. The fire investigator is responsible for identifying and working with the appropriate law enforcement office.

7.5. Investigation Responsibilities Relating to Jurisdiction Contracts, Compacts, and Agreements

In many locations, agencies and tribes have entered into programmatic wildfire contracts, compacts, and other written agreements. These documents include a wide variety of services, which may include preparedness, prevention, suppression, detection, and investigation. Language in these documents must be specific for the tasks to be performed and services to be provided. The service provider or contractor must at least meet the minimum standard established by the BIA for the defined program area. Annual review of these documents must occur to ensure trust responsibilities are being met by the BIA through the agreement or contract. This also applies to 638 contracts and compacts. If a contract or compact tribe is not performing wildfire investigation responsibilities, the BIA is still responsible for ensuring that the basic trust responsibilities are fulfilled.

7.6. Determination of Jurisdiction

Due to the jurisdictional maze, it may not always be clear at the onset of a fire investigation which jurisdiction is the appropriate one for prosecution. Until the status of the defendant, victim, and land is definite, it cannot be determined whether the offense will be prosecuted in Tribal, State, or Federal Court.

With the enactment of Public Law 83-280 in 1953, jurisdictional issues in Indian Country were further complicated. The following information provides an explanation of both Public Law 83-280 States and Non-280 States jurisdictional issues.

7.7. Public Law 83-280 (PL 280 States)

Public Law 83-280 is a complicated and controversial law that gives certain states criminal jurisdiction over all or some of the reservations within their borders. Congress amended PL 280 in 1968 and some states acquired judicial jurisdiction by other enactments.

Under PL 280, mandated states are to assume criminal and civil jurisdiction in matters involving "Indians as litigants" on reservation lands. Previously, these matters had been dealt with in either Tribal or Federal Court. PL 280

was an attempt by the Federal Government to reduce its role in Indian affairs, and to give the state's law enforcement and civil judicial authority, but not regulatory power. ⁴ The U.S. Supreme Court interprets PL 280 as a law designed only to open state courts to civil and criminal actions involving "reservation Indians," not to subject reservations to the full range of state regulation.

On reservations not under PL 280, the Federal criminal justice system has a significant role in Indian Country. The Federal Bureau of Investigation and the Bureau of Indian Affairs often investigate crimes. Major crimes involving Indians or interracial crimes are prosecuted through the United States Attorney's Office. In states with PL 280, the Federal role is eliminated or reduced. About 23 percent of the reservation-based tribal population in the contiguous 48 states and all Alaska natives fall under PL 280.⁵

PL 280 transferred Federal criminal jurisdiction in Indian Country to six states that could not refuse jurisdiction, known as the "mandatory states." The law also permitted other states, at their option to choose to assume complete or partial jurisdiction over crimes committed by or against Indians in Indian Country. Ten states chose to assume some jurisdiction and are referred to as "optional states." There is a retrocession provision in PL 280, and several mandatory and optional states have returned jurisdiction to the Federal Government (nearly 30 Tribes), thereby reinstating Tribal/Federal responsibility for law enforcement.

⁴ *Public Law 280: Issues and Concerns for Victims of Crime in Indian Country. Prepared by the University of Oklahoma Health Sciences Center under grant from the Office for Victims of Crime, U.S. Department of Justice, March 2000*

⁵ *Public Law 280 and Law Enforcement in Indian Country—Research Priorities, U.S. Department of Justice Research Brief, Office of Justice Programs NIJ, December 2005*

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The following table summarizes States affected by PL 280⁶:

Mandatory States^a	Optional States^b
Alaska California Minnesota ^c Nebraska ^c Oregon ^c Wisconsin ^c	Arizona Florida Idaho ^c Iowa Montana ^c Nevada ^c North Dakota ^c South Dakota Utah Washington ^c
<p>a. Tribes excluded from State jurisdiction by PL 280 were Confederated Tribes of the Warm Springs Reservation in Oregon and the Red Lake Band of Chippewa Indians in Minnesota.</p> <p>b. Some of the optional States made their acceptance of PL 280 jurisdiction contingent on tribal or individual Indian consent that was never forthcoming. Other optional States accepted jurisdiction over very limited subject areas.</p> <p>c. Contains some tribes that have retro ceded.</p>	

The General Crimes Act—18U.S.C. §1152 states “general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia.... extend to the Indian Country.” Arson is among the statutes in the General Crimes Act and can be found in 18 U.S.C. § 81.⁷ The following tables differentiate criminal and civil jurisdiction between states with and without PL 83-280.

⁶ *Public Law 280: Issues and Concerns for Victims of Crime in Indian Country. Prepared by the University of Oklahoma Health Sciences Center under grant from the Office for Victims of Crime, U.S. Department of Justice, March 2000*

⁷ *Criminal Resource Manual 678, Title 9, Department of Justice, The General Crimes Act 18 U.S.C., 1152*

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Differentiation in Criminal Jurisdiction Between States With and Without PL 83-280⁸

	States without PL 280	States with PL 280
Tribal	Jurisdiction over Indians is subject to limits on punishment in Indian Civil Rights act	Jurisdiction over Indians is subject to limits on punishment in Indian Civil Rights act
Federal	Jurisdiction over major crimes committed by reservation Indians Jurisdiction over interracial crimes (Indian vs. non-Indian) (Major crimes Act); Otherwise same as off-reservation	Same as off reservation
State	Jurisdiction over crime committed by non-Indians against other non-Indians	Jurisdiction over Indians and non-Indians generally with exceptions in PL 280

Differentiation in Civil Jurisdiction Between States With and Without PL 83-280⁹

	States without PL 280	States with PL 280
Tribal	Jurisdiction over Indians and non-Indians with limitations	Jurisdiction over Indians and non-Indians with limitations
Federal	Same as off-reservation	Same as off-reservation
State	No jurisdiction, except some suits with non-Indians or on fee lands	Jurisdiction over suits involving Indians or non-Indians generally with exceptions found in PL 280

⁸ Act of August 15, 1953, ch.505, 67 Stat. 588-590 (now codified as 18 U.S.C. 1162, 28 U.S.C. 1360 and other scattered sections in 18 and 28 U.S.C.)

⁹ Public Law 280: Issues and Concerns for Victims of Crime in Indian Country. Prepared by the University of Oklahoma Health Sciences Center under grant from the Office for Victims of Crime, U.S. Department of Justice, March 2000

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The following chart is a summary of the relevant jurisdictional parameters for many crimes where the State has some jurisdictional basis if the crime has occurred on tribal lands. It was derived from a panel discussion, "Jurisdiction in Indian Country," held at the law enforcement summit, Sac and Fox Tribe of The Mississippi in Iowa, June 8, 2006. It represents PL 83-280 jurisdictions.

Offender	Victim	Jurisdiction
Indian	Indian	State has concurrent jurisdiction with tribal courts for all offenses, and concurrent jurisdiction with the federal courts for those major crimes listed in 18 U.S.C. §1153
Indian	Non-Indian	Federal, state, and tribal concurrent jurisdiction
Non-Indian	Indian	Concurrent federal and state jurisdiction for both felonies and misdemeanors, including assimilative crimes, exclusive of tribal jurisdiction
Non-Indian	Non-Indian	State jurisdiction exclusive of federal and tribal jurisdiction
Indian	Victimless Crime	There may be concurrent state, federal, and tribal jurisdiction. There is no state regulatory jurisdiction except as granted in the Gaming Compact
Non-Indian	Victimless Crime	State jurisdiction is exclusive, although federal jurisdiction may attach if impact on individual Indian or tribal interest is clear

7.8. Non-PL 280 States

The table below summarizes the jurisdictional issues in those states without PL 83-280¹⁰.

When the crime committed is a “**MAJOR**” crime:

Offender	Victim	Jurisdiction
Indian	Indian	Federal government (Major Crimes Act) and tribal government (inherent sovereignty)
Indian	Non-Indian	Federal government (Major Crimes Act) and tribal government (inherent sovereignty)
Non-Indian	Indian	Federal government only (Indian Country Crimes Act)
Non-Indian	Non-Indian	State government only

When the crime committed is **NOT** a “Major” crime:

Offender	Victim	Jurisdiction
Indian	Indian	Tribal government (inherent sovereignty)
Indian	Non-Indian	Federal government (Major Crimes Act) and tribal government (inherent sovereignty)
Non-Indian	Indian	Federal government only (Indian Country Crimes Act)
Non-Indian	Non-Indian	State government only

¹⁰ *The Rights of Indian Tribes, Third Edition 2004- Stephan L. Pevar*

7.9. CIVIL vs. CRIMINAL TRESPASS

Determining civil or criminal liability is the responsibility of the law enforcement office in the affected jurisdiction. The role of the INVf ends once the origin and cause have been determined, and all reports and evidence have been turned over to law enforcement. In some cases, the wildfire investigator may be requested by law enforcement or the courts to provide additional information or testimony.

7.10. Who Investigates?

The agency responsible for the management of Indian Trust lands in which the wildfire occurred (BIA or tribe under contract/compact) will undertake investigations of civil damages. In criminal cases, the investigation may be undertaken by the FBI. In some instances, particularly those involving smaller cases, the FBI may take over a criminal case that was investigated initially by the BIA or tribe. In any event, the office that first investigates a case should continue to exercise responsibility for the investigation until it is clearly relieved of that responsibility by another agency.

7.11. Privilege Against Self-Incrimination

In a civil case, a defendant has the burden of rebutting the presumption that he or she was responsible for unlawful cutting. In a criminal case, a defendant has the privilege against self-incrimination. The Government must establish all of the elements of the offense, including the element of willfulness, by its own investigation, and must establish guilt beyond a reasonable doubt.

7.12. Establishing Damages

In a civil case, the Government must establish with reasonable certainty the nature and cost of damages by a preponderance of the evidence. To get a judgment, it must be shown that the defendant damaged forest resources without authority, and that the Indian owners suffered damages in the amount submitted. In a criminal case, it is not necessary to show the precise degree of damages suffered by the Indian owners. There are occasions in a criminal case, however, when a judge will impose a sentence and then suspend it on the condition that the defendant make restitution in the amount of damages.

7.13. Resource Criminal Codes for Wildfire Offenses

Many reservations have revised criminal codes that pertain to wildfires. The local law enforcement agency, tribal prosecutor and/or tribal judge are responsible for ensuring that resource criminal codes are in place, that they are correctly interpreted, and when multiple code violations have occurred, that the appropriate violation is cited. In cases where wildfire trespass has occurred, the BIA or jurisdictional body will determine the appropriate course of action.

CHAPTER 8 – WILDFIRE COST AND FIRE TRESPASS

DAMAGE RECOVERY

Federal and state statutes provide authority for the Federal government to collect fire suppression costs and resource damages resulting from a fire. (See 28 U.S.C. § 2415(b) and 31 U.S.C. § 3717.) Fire suppression costs include all costs related to the fire investigation, law enforcement follow up, and the actual suppression of the wildfire. An intentionally set fire may cause little or no damage to Tribal forest or agricultural resources, but there may be high suppression costs. The line officer is responsible for contacting the U.S. Attorney's Office and/or the Solicitor to determine a course of action for cost recovery on those fires that did not damage forest or agriculture. In order for the BIA to fulfill fiduciary trust responsibility, protect assets for the benefit of Indian owners, and obtain full recoverable damages, the appraisal of damages is a top priority.

8.1. Trespass Determination

During the process of origin and cause determination, evidence of forest resources or agriculture trespass may be present. A trespass committed intentionally may be prosecuted criminally as well as civilly. Regardless of whether the trespass was intentional or unintentional, civil penalties apply. If damage to agriculture or forest products on Tribal trust lands results from the wildfire under investigation, then a trespass report will need to be completed. Trespass actions on Indian forest lands are necessary per 25 CFR § 163.1 to ensure that the assets associated with these lands are protected for the benefit of the Indian owners. Trespass on Indian agricultural lands is covered under 25 CFR § 166.8 and is addressed in Chapter 7 of the BIA Agricultural and Range Management Handbook. If forest resources are damaged as the result of fire, civil penalties apply; they include treble stumpage, costs associated with damage to land and/or resources, costs associated with the enforcement of regulations, and interest. Money obtained by the U.S. Government in a civil suit, because of its position as trustee of Indian property, is generally then paid to the landowner whose property rights were violated. Under 25 CFR Chapter 1 § 166.812, if agricultural products are involved, trespassers on Indian agricultural land must pay the following penalties and costs:

- Collection of the value of the products illegally used or removed plus a penalty of double their values;

- Costs associated with any damage to Indian agricultural land and/or property;
- Costs associated with enforcement of the regulations, including field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees

8.2. Responsibilities/Procedures/Cost Recovery

Refer to *Indian Forest Management Handbook on Forest Trespass 53 IAM 7-H* issued 2/17/2006 for trespass issues. This handbook addresses the policy, procedure, and documentation necessary for recovery of damages, and the procedure to follow when enforcing collections up to the point where action in court becomes necessary. It is the responsibility of the Federal Government, acting through the Bureau of Indian Affairs or through tribal programs that have delegated or contracted authority from the Secretary, to protect assets associated with tribal lands and recover damages (25 CFR § 163.1). Here are the procedures for preparation of a criminal and/or civil case of fire trespass occurring on tribal trust land:

- A qualified investigator will complete a thorough and accurate origin and cause investigation as soon as possible after ignition, consistent with the guidance found in NFPA 921.
- A qualified natural resource staff member will make forest resource damage or an agricultural damage determination and an accurate damaged acreage assessment.
- The investigator will complete an origin and cause report including suspect(s) name and contact information if known.
- A timber trespass or agricultural trespass report will be completed by a qualified natural resource staff member, or by the origin and cause investigator in consultation with a qualified staff member. Reference to the Federal law governing Indian timber can be found in the National Indian Forest Resource Management Act (NIFRMA), 25 U.S.C. §§ 3101 to 3120.

In consultation with the Federal solicitor, a demand letter of recoverable costs will be sent by certified mail to the suspect(s) identified in the origin and cause investigation.

8.3. Standards for Cost Recovery

Regardless of the method used, a trespass appraisal is likely to be challenged by the trespasser (or the attorney for same) and may have to be defended in court. Actual costs and market values must be verifiable, current, and applicable to the local area. Estimates used in calculations must be proven relevant and factually supportable. Billing for the full amount of damages warrants a complete investigation that captures total costs of the fire. This can be a time consuming and lengthy process. The investigator at the time of the origin and cause determination may not know if the investigation will lead to civil or criminal charges or both. The origin and cause investigator must proceed with investigation report preparations that meet the highest standards (criminal). Successful prosecution of the criminal trespass case requires proof beyond a reasonable doubt that the defendant(s) committed the criminal act(s) as charged. The wildfire origin and cause report and law enforcement report will often be supplemental attachments to the fire trespass report.

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GLOSSARY

Accelerant: Material (usually a flammable liquid) used to initiate or increase the spread of a fire.

AD Hire: Administrative Determined hire for emergency situations related to fire. See current Fiscal Year version for details.

Administrative Law: Refers to the body of rules, regulations, orders, and decisions created by administrative agencies of government. The Federal regulations (administrative laws) in 25 CFR address trespass actions on Indian forest and agricultural lands.

Advancing Fire: This is fire progression associated with the head (front) of the fire.

Area of Origin: General localized area where a fire originated.

Arson: The crime of maliciously and intentionally or recklessly starting a fire or causing an explosion.

Backing Fire: This is fire progression associated with the heel (rear) of the fire.

Burden of Proof: National Fire Protection Association (NFPA) 921, section 11.5.5, defines burden of proof: The burdens of proof in civil cases differ from those in criminal cases. In a criminal case, because the civil liberties of the defendant are at stake, the prosecutor must prove the defendant's guilt beyond a reasonable doubt. Civil cases typically involve disputes over money. In most civil cases, the plaintiff must prove his or her claims by a preponderance of the evidence, which means "more likely than not."

Case: A written report developed by a law enforcement officer submitted to the court for consideration for prosecution.

Case Status: To ensure consistency and continuity throughout the investigation program, the terms *Open* or *Closed* are used when discussing cases, especially when reporting status, completing case logs, or updating automated case tracking systems. This term is used for law enforcement and not origin and cause determinations. ***Note:*** the status of a case may change from one category to another throughout the life of the case.

The following categories apply to law enforcement Case Status:

A. Open Case: In these cases, the supervisor has applied solvability factors, assigned an investigator to the case, and assigned a case number. The case agent is actively pursuing leads, conducting interviews, writing the report, or other related tasks. These cases are reviewed for possible change of status every 30 days during the supervisor's case review.

B. Closed Case. In these cases, some results were obtained as a result of productive casework. Ideally, this will be a conviction, but not always. When cases have been catalogued in this category, they usually will not be reopened. Some examples of sub-categories for closed cases are:

1. **Closed – by Indictment, Arrest, or Information.** At least one person was indicted or arrested for the offense being investigated.
2. **Closed – Exceptionally.** Casework identified the offender, there was enough information to support a charge for prosecution, the location of the offender is known, but there is a reason outside of law enforcement control that precludes charging and prosecuting the offender (such as death or suicide of the offender).
3. **Closed – Unfounded.** Casework proved that the alleged offense did not occur, or was not a prosecutable offense (for example, a suspected homicide that turned out to be a suicide).
4. **Closed – Declined.** The case was presented to the prosecutor, (for example, the U.S. Attorney), but prosecution was declined.
5. **Closed – Referred.** The case was referred to another jurisdiction for possible prosecution.

6. **Closed – Unsolved.** Work on this case has been discontinued, no solvability factors have been identified, all current leads have been exhausted, the case has not been presented for prosecution, no person has been arrested, and no plea has been entered after investigative efforts. This sub-category may change at any time if additional evidence, leads, or witnesses appear.

CFR Court: Courts of Indian Offenses are courts operated by the Department of Interior, Bureau of Indian Affairs on certain reservations. These courts, often referred to as CFR courts, operate under Federal regulations contained in volume 25 of the Code of Federal Regulations.

Children: This is a fire cause category defined as wildfires started by persons 12 years of age or younger.

Civil Litigation: NFPA 921 says that these lawsuits as “typically involve claims of damages for death, injury, property damage, and financial loss caused by a fire or explosion. The majority of civil lawsuits are premised on allegations of negligence. A significant number of civil lawsuits are premised on the legal principle of product liability or alleged violations of applicable codes and standards.” Every fire scene investigator must have an understanding of civil litigation principles in order to respond effectively when called to testify in a civil proceeding.

Concurrent Jurisdiction: Concurrent jurisdiction exists where two or more courts from different systems simultaneously have jurisdiction over a specific case. This situation leads to forum shopping, as parties will try to have their lawsuit heard in the court that they perceive will be most favorable to them.

Contacts or List of Contacts: The investigation report includes names and contact information of people who were involved in the case. These contacts may include witnesses, investigators, technical specialists, suspects, firefighters, dispatch personnel, consultants, legal counsel, and others.

Criminal Conviction: This is a determination by a judge or jury that the accused is guilty of a crime beyond a reasonable doubt, followed by a formal sentencing or punishment. This is a typical conviction of a misdemeanor or felony resulting from a criminal code violation.

Curriculum Vitae (CV): This is a written statement describing the fire investigator’s employment history, prior testimony given, training received,

training conducted, professional affiliations, papers or publications written, professional resources used, and additional qualifications. The preparation of the CV is an important aspect of preparing to testify as an expert or in other legal situations.

Daubert Standard: Dictates that any hypothesis formed from an analysis of the data collected must stand the challenge of reasonable examination by the investigator testing the hypothesis or by the examination by others.

Demand Letter: This is a letter sent to the trespasser that must comply with the regulations and standards for the administrative collection of claims cited in 31 CFR § 901.2.

Double Jeopardy: Black's Law Dictionary 440 (5th edition, 1979) defines this as "Common-law and constitutional (Fifth Amendment) prohibition against a second prosecution after a first trial for the same offense. The evil sought to be avoided is double trial and double conviction, not necessarily double punishment." Double jeopardy may not apply with Tribal Courts if a Tribe is sovereign from the United States. Double jeopardy may not apply when two separate governments both prosecute a person for the same crime.

Expert Witness: A witness who has a body of knowledge, skill, or experience in a particular profession or area of study that allows him/her to draw inferences and form conclusions that an average layperson could not. Most fire cases will require expert testimony as to the origin and cause of the fire.

Eyewitness: Person who has seen evidence of criminal activity, actual commission of a crime or a criminal fleeing a crime scene

Fact Witness: Witness who provides information on something known to have happened through actual experience or personal observation. Testimony is based on factual matters (things a witness saw, heard, did, or smelled) that do not require the formulation of an opinion or conclusion.

Felony: A serious crime, often contrasted with a misdemeanor. In the U.S. legal system, this distinction is principally made in criminal law. The Federal Government considers a misdemeanor crime punishable with five days to a year in jail, and a felony crime as punishable with a year or more in prison

Fire Direction Indicators: As fire progresses, it will leave visible marks of its passage on combustible and non-combustible objects in its path. These markings are called fire direction indicators.

Fire Investigation: Procedure undertaken to determine, at a minimum, when, where, and how a fire (or fires) started; and who or what was the cause.

Fire Trespass: The act of willfully or accidentally causing to be kindled or setting fire, without authority, any timber, underbrush, grass, or other inflammable material on Indian land by another. Fire trespass can occur on Indian forest lands and Indian agricultural lands, among others.

Forensic Interview: See Interrogation

Forest Products: Marketable products extracted from Indian forests, such as: timber; timber products, including lumber, lath, crating, ties bolts, logs, pulpwood, fuelwood, posts, poles, and split products; bark; Christmas trees, stays, branches, firewood, berries, mosses, pinyon nuts, roots, acorns, syrups, wild rice, mushrooms, and herbs; other marketable material; and gravel which is extracted from, and utilized on, Indian forest lands (25 CFR§163.1).

Freedom of Information Act (FOIA): The Freedom of Information Act, or FOIA (5 U.S.C. 552), gives the public rights to access any Department of the Interior (DOI) records, unless the information in those records is protected by one or more of the nine exemptions (reasons an agency may withhold records from a requester) and there is a sound legal basis to withhold them.

Fulgurites: Glassy mass of soil fused by the passage of lightning or a power line current into the soil.

Gatekeeper: The Supreme Court has ruled Federal trial judges to become the “Gatekeepers” of scientific evidence. Trial judges must evaluate potential expert witnesses to determine whether their testimony is both **relevant** and **reliable**. This is often referred to as the two-pronged test of admissibility.

General Cause Category: A system that classifies the fire cause according to the ignition source or to the general human-related activity that started the fire.

General Origin: The area where the fire comes under the influence of the varying fire behavior factors

Igniter: A pyrotechnic device specifically designed to initiate burning of a fuel mixture or propellant.

Incendiary Fire: This is a fire that is willfully set without authorization; also, fires that are deliberately set to cause damage or to defraud.

Indian Country: This term is defined at 18 U.S.C. 1151 as follows:
...(a) all land within the limits of any Indian Reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including the rights-of-way through the reservation, (b) all dependent Indian Communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the titles to which have not been extinguished, including rights-of-way running through the same.

Indian Land: Any tract in which any interest in the surface estate is owned by a tribe or individual Indian in trust or restricted status¹¹.

Initial Attack Incident Commander (IAIC): The incident commander at the time the first attack forces commence suppression work on a fire.

Interior Board of Indian Appeals (IBIA): The Chief Administrative Judge and Administrative Judge(s) of the Interior Board of Indian Appeals are authorized to exercise, pursuant to regulations published in the Federal Register, the authority of the Secretary in deciding appeals from (a) administrative actions and decisions of officials of the Bureau of Indian Affairs (other than actions and decisions involving contracts) in cases involving determinations, findings, and orders protested as a violation of a right or privilege of the appellant under regulations in 25 CFR Part 2; (b) orders and decisions of Administrative Law Judges and Indian Probate Judges in Indian probate matters; (c) decisions of the Superintendent of the Osage Indian Agency on the validity of Osage Indian wills, pursuant to 25 CFR § 17.14; (d) decisions of an administrative judge under the White Earth Reservation Land Settlement Act; and (e) historical accountings issued by the Office of Historical Trust Accounting. They are also authorized to decide other matters pertaining to Indians referred to the Board by the Secretary, the Assistant Secretary - Indian Affairs, or the Director.

Interrogation or Forensic Interview: A term that describes vigorous questioning, usually by law enforcement, of a suspect in custody. Other than providing name and address, the suspect is not obligated to answer

¹¹ 25 CFR §166.4

questions; remaining silent generally cannot be used by the prosecution to help prove guilt. If the suspect asks for a lawyer, the law enforcement must cease questioning. If they do not, they cannot use the answers against the suspect at trial. Interrogation may require the need for advisement of rights per the Miranda decision.

Interview: A consensual questioning of a witness. It differs from a voluntary statement in that the investigator is asking the witness specific questions about the incident, rather than having the witness write a voluntary statement. An interview does not trigger the need for a Miranda warning and waiver.

Investigation Kit: Items that may be required for any wildfire investigation.

Investigation Officer: Investigator selected by the prosecutor in a criminal case to assist with the prosecution during the course of a trial, both in and out of the courtroom.

INVF: See Wildland Fire Investigator

Juvenile: A young person who has not yet attained the age at which he or she can be treated as an adult for the purposes of criminal law.

Juvenile Courts: A court having special jurisdiction, of a paternal nature, over delinquent, dependent, and neglected children.

Lateral Fire: This is the fire progression associated with the flanks (sides) of the fire

Law Enforcement Officer (LEO): An employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses (See U.S. Code Title 5, Part III, Subpart G, Chapter 83, Subchapter III § 8331).

Line Officer: This refers to an individual with decision-making authority for the agency or jurisdiction having responsibility for the incident. Also known as the Agency Administrator.

Line Officers Summary: A brief executive summary of the wildfire investigation that is submitted to the jurisdictional agencies line officer. This summary does not contain **any** specific case information; it is merely a

notification of findings. It is used primarily to notify the line officer that a trespass has occurred.

Major Crimes Act: This law, passed by Congress in 1885, places 15 major crimes under Federal jurisdiction if they are committed by a Native American against another Native American in Native Territory (Reservations). **Arson** is defined as a **Major Crime**.

Misdemeanor: These are "lesser" crimes, generally punished less severely than felonies. Many misdemeanors are punished with monetary fines. Usually, only repeat misdemeanor offenders are punished by actual jail time.

National Fire Protection Association (NFPA) 921 Guide for Fire and Explosion Investigations: These guidelines present a science-based, systematic methodology that has been peer reviewed and is generally accepted by the wildland fire investigation profession.

National Fire Protection Association (NFPA) 1033 Professional Qualifications for Fire Investigator: NFPA 1033 is considered the industry standard for qualifications for the position of fire investigator. It identifies the minimum job performance requirements necessary to perform as a fire investigator in both the private and public sectors. An expanded scope applies to all fire investigations — including outside, vehicle, and other fires that are not structural.

National Wildfire Coordinating Group (NWCG): NWCG is made up of the USDA Forest Service; four Department of the Interior agencies: Bureau of Land Management (BLM), National Park Service (NPS), Bureau of Indian Affairs (BIA), and the Fish and Wildlife Service (FWS); and State forestry agencies through the National Association of State Foresters. The purpose of NWCG is to coordinate programs of the participating wildfire management agencies so as to avoid wasteful duplication and to provide a means of constructively working together. NWCG's goal is to provide more effective execution of each agency's fire management program. The group provides a formalized system to agree upon standards of training, equipment, qualifications, and other operational functions.

National Wildfire Coordinating Group (NWCG) Handbook 1: The NWCG Handbook provides instructions for identifying the point of origin of a wildfire, protecting potential valuable evidence, and document and collecting that evidence, so the cause of the wildfire can be determined accurately. These guidelines were developed to assist the investigators in securing the best evidence to be used in legal proceedings, to serve as the basis for

administrative decisions, and for policy development. The information in this handbook is consistent with NFPA 921 and provides additional guidance for wildfire investigations.

Notice of Trespass: Once a trespass action has been initiated a “Notice of Trespass” shall be sent as soon as possible by the responsible Bureau office to alleged or suspected trespassers. The Notice, which includes all the information required by the regulations, must be sent before a demand letter goes out requesting payment (25 CFR § 163.29(g) (1)-(5)).

Office of Justice Service: BIA’s law enforcement branch. Also known as “OJS”.

Oliphant Case: The *Oliphant* case involved two non-Indian defendants, Mark David Oliphant and Daniel B. Belgarde. Oliphant and Belgarde were both arrested under the Tribal Law and Order Code. The two men applied for a writ of habeas corpus under the Indian Civil Rights Act of 1968 claiming the tribal court had no jurisdiction. The district court and the U.S. Court of Appeals both upheld tribal jurisdiction. The Supreme Court, however, held that Indian tribal courts have no criminal jurisdiction over non-Indians.

Origin and Cause Determination: The first steps in a wildland fire investigation are to determine the area of origin, then to establish what fuel was present and what source of heat ignited it. Generally, if the origin of a wildfire cannot be determined, the cause cannot be determined.

Origin and Cause Field Report: This refers to BIA-INVF Field Report Forms-2012, Wildland Fire Field Report. This is the usual hand-written paperwork that will need to be completed in the field, at the fire scene, by the investigator. Additional attachments, such as the evidence log, may be required.

Perpetrator: This term refers to the arsonist or other person who actually committed the crime. Only after being convicted is the suspect properly called the perpetrator.

Personal Identifiable Information (PII): As used in information security, PII refers to information that can be used to uniquely identify, contact, or locate an individual; or it can be used with other sources to uniquely identify a single individual. The abbreviation PII is widely accepted, but the phrase it abbreviates has four common variants, based on *personal*, *personally*, *identifiable*, and *identifying*. Not all are equivalent. The effective definitions

vary, depending on the jurisdiction, and the purposes for which the term is being used. The OMB defines PII as follows:

Information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc.

Person of Interest: This term is often used by authorities when announcing the name of someone involved in a criminal investigation who has not yet been arrested or formally accused of a crime.

Physical Evidence: Any physical or tangible item that tends to prove or disprove a particular fact or issue. Physical evidence at the fire scene may be relevant to the issues of the origin, cause, spread, or responsibility.

Point of Detonation: Actual location where an explosion was detonated.

Point of Origin: Exact location where a fire started — where this ignition source first contacted the material ignited, and sustained combustion occurred.

Police Officer: See Law Enforcement Officer

Probable Cause: The existence of sufficient evidence for an ordinary person to reasonably believe that a felony offense was committed by an accused defendant.

Privacy Act: The **Privacy Act of 1974**, 5 U.S.C. § 552a, Public Law No. 93-579, (Dec. 31, 1974) establishes a code of fair practices that govern the collection, maintenance, use, and dissemination of personally identifiable information that is maintained in systems of records by federal agencies.

Range Land: Means Indian land, excluding Indian forest land, on which native vegetation is predominantly grasses, grass-like plants, half-shrubs or shrubs suitable for grazing or browsing use, and includes lands re-vegetated naturally or artificially to provide a forage cover that is managed as native vegetation (25 CFR §166.4).

Restricted Indian Land: Land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the

owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to federal law.

Search Warrant: A written order in the name of the state, signed by a magistrate, commanding a law enforcement officer to search for and seize any property that constitutes evidence of the commission of a particular crime.

Scene Diagram: Compared to sketches, diagrams are generally more formal, are drawn to scale, and are completed after the scene investigation is completed.

Scene Sketch: Sketches are generally freehand drawings, completed with minimal tools at the scene. They can be either three dimensional or two dimensional representations of features found at the fire scene. Usually not to scale and should be stated as such.

Scientific Method: This is a form of inquiry that serves as the basis for scientific and engineering processes, including fire investigations.

Specific Origin: The area immediately surrounding the point of origin.

Standard Fire Investigation Report: BIA has adopted a standard wildfire origin and cause determination report format. This format will be used for all wildfires investigated by BIA and Tribal investigators. The authors must provide sufficient in detail to memorialize and reconstruct the investigative methodology used and documentation of the findings. As a minimum, the report includes Incident number, date of incident, time incident reported, location, person writing report, summary, dispatch information, contact information, investigation methodology, procedures used, property and evidence, findings, damages and cost recovery, and necessary attachments See Appendix I for outline.

Suspect: This refers to a known person suspected of committing a crime, but **not** been proven guilty.

Systematic Approach: The systematic methodology recommended is based on the scientific method used in the physical sciences. This method provides for the organizational and analytical process desirable and necessary in a successful wildland fire investigation and is consistent with the recommendations found in NFPA 921, Guide for Fire and Explosion Investigations.

Trier of Fact: This is a person who determines facts in a legal proceeding. In a jury trial, the jury is the Trier of fact, while the judge makes legal rulings as to what evidence will be heard by the jury and what law applies.

Trust Land: Any tract, or interest therein, that the United States holds in trust status for the benefit of a tribe or individual Indian.

Vector: An indicator's vector is the direction of travel, i.e. advancing, backing, or lateral.

Wildfire: An unplanned, unwanted wildland fire, including unauthorized human-caused fires, escaped wildland fire use events, escaped prescribed fire projects, and all other wildland fires where the objective is to put the fire out.

Also defined as:

A fire occurring on wildland that is not meeting management objectives, and thus requires a suppression response.

Wildland: An area in which development is essentially non-existent, except for roads, railroads, power lines, and similar facilities. Structures, if any, are widely scattered.

Wildland Fire: Refers to any non-structure fire that occurs in the wildland. Three distinct types of wildland fire have been defined: wildfire, wildland fire use, and prescribed fire. Also may refer to any fire occurring on the wildlands, regardless of ignition source, damages, or benefits.

Wildland Fire Investigator (INVF): This is an NWCG position published in the Wildland and Prescribed Fire Qualifications Guide (PMS 310-1) with Standards for Professional Qualifications directed by NFPA 1033. The primary responsibility of the INVF is to determine the origin and cause of wildfire(s).

Wildland Fire Investigation: An investigation based on a systematic methodology and examination of wildland fire incident(s), which provides documentation of unbiased facts through interaction with people, assessment of physical objects, competent use of science, technical skill, and intuition, along with professional preparation in meeting strict administrative or legal mandates.

Wildfire Investigation Status: The terms *Open* or *Closed* are used when discussing an origin and cause determination investigation.

The following categories apply to wildfire investigation status:

A. Open Investigation: An open investigation exists when the investigator is actively engaged in an origin and cause determination. Upon completing the origin and cause determination and investigation report, the investigation is moved to closed status.

B. Closed Investigation. These investigations have some results obtained as a result of productive investigation. Ideally, this will be a referral, but not always. When investigations have been catalogued in this category, they usually will not be reopened. Some examples of sub-categories for closed investigations are:

1. **Closed – Referred.** The investigation was referred to the appropriate law enforcement jurisdiction and/or Solicitors Office for possible case development.
2. **Closed – Solved.** An origin and cause determination has been completed. No further action is required.
3. **Closed – Unsolved.** Work on this investigation has been discontinued, no solvability factors have been identified, fire scene may have been severely disturbed by suppression operation and/or weather conditions. No witnesses have been identified. This sub-category may change at any time if additional evidence, leads, or witnesses appear.

Witness: Someone who has firsthand knowledge about a crime or significant event through their senses (e.g., seeing, hearing, smelling, touching) and can help certify important considerations to the crime or event. A witness who has seen the event firsthand is known as an "eye-witness." Witnesses are often called before a court of law to testify in trials after taking an oath.

Witness Voluntary Statement: The investigator asks a person(s) to record any observations or other knowledge they are willing to give in their own handwriting. This is generally done at the fire scene.

Youth Fire Setter Intervention Program: The program consists of six general components designed to provide a comprehensive continuum of service for children or juveniles who come to the attention of the Coalition for fire setting behavior. The youths may be identified by parents, schools, fire investigation/law enforcement, or Tribal Court.

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APPENDIX A

List of Federal Statutes and Regulations Pertaining to Wildfires

18 U.S.C. § 1855 - TIMBER SET AFIRE

**18 U.S.C. § 1856 - FIRES LEFT UNATTENDED AND UN-
EXTINGUISHED**

**18 U.S.C. § 1153 - OFFENSES COMMITTED WITHIN INDIAN
COUNTRY**

18 U.S.C. § 1853 - TREES CUT OR INJURED

**18 U.S.C. § 5032 - DELINQUENCY PROCEEDINGS IN DISTRICT
COURTS; TRANSFER FOR CRIMINAL
PROSECUTION**

25 CFR 11.409 - RECKLESS BURNING OR EXPLODING

25 CFR 11.410 - CRIMINAL MISCHIEF

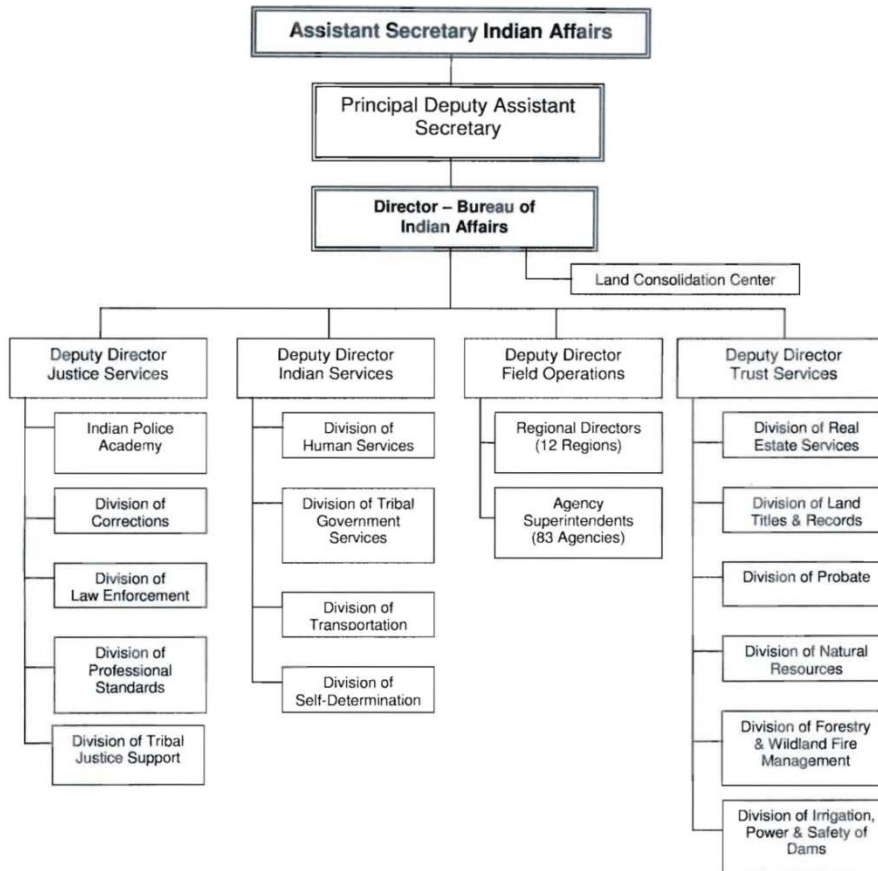
25 CFR 11.430 - FALSE ALARMS

25 CFR 163.29 - TRESPASS

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APPENDIX B

BIA Trust Services Organizational Chart



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APPENDIX C

BIA WILDFIRE INVESTIGATOR CODE OF CONDUCT AGREEMENT

1. I will conduct all wildfire investigations in a manner that inspires the confidence of the tribal public and tribal leadership.
2. Conduct wildfire investigations that are respectful of tribal resources, culture, and traditions in a prompt and timely manner.
3. I will conduct all wildfire investigations within the scope of my employment and according to my jurisdictional law and agency policy.
4. I will not at any time misrepresent myself or the authority to which I am employed.
5. I will comply with all federal, state, tribal, and local laws and government regulations applicable to my investigations.
6. I will provide disclosure and finding of fact in an unbiased and competent fashion.
7. I will maintain confidentiality and professionalism for the protection of innocent parties.
8. I understand that this Code of Conduct Agreement is in addition to requirements set forth by the National Wildfire Coordinating Group for the position of wildfire investigator. I understand that violation of this code will result in my qualifications as a Wildfire Investigator being suspended or revoked. By signature I accept these terms and conditions.

Signature of Investigator

Date

Witness/Title

Date

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APPENDIX D

FBI Handbook of Forensic Services Ordering Instructions

The FBI Handbook of Forensic Services (formerly the Handbook of Forensic Sciences) was rewritten and published in 2003. The purpose of the Handbook is to provide guidance and procedures for safe and efficient methods of collecting and preserving evidence and to describe the forensic examinations performed by the FBI Laboratory.

The Handbook is divided into five sections.

- 1) "Introduction" details the availability of the laboratory services, which include forensic examinations of evidence and expert witness testimonies.
- 2) "Evidence Submission" lists the procedures required to request evidence examinations and to package and ship evidence to the laboratory.
- 3) "Examinations" describes the types of evidence examinations provided and specific evidence collection and preservation techniques.
- 4) "Crime Scene Safety" provides familiarity of the hazards, safety precautions, and safe work practices. This section also provides training on applying these principles.
- 5) "Crime Scene Search" outlines the steps necessary to process a crime scene.

The Handbook is available in an on-line format that may be viewed on the FBI Web site at <http://www.fbi.gov/programs/lab/handbook/intro.htm>.

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APPENDIX E

OJS District Commander Contact List

District One Headquarters: BIA-OJS

Mailing Address: PO Box 150
Aberdeen, South Dakota 57402
Office: 605.226.7347
Fax: 605.226.7349

Physical Address: 115 4th Ave., SE, MC: 302
Aberdeen South Dakota 57402

District Two Headquarters: BIA-OJS

Mailing Address: PO Box 8002
Muskogee, Oklahoma 74402
Office: 918.781.4650
Fax: 918.781.4676

Physical Address: 3100 W. Peak Blvd
Muskogee, OK 74402

District Three Headquarters: BIA-OJS

Mailing Address: 2600 North Central Ave
Floor 8
Phoenix, Arizona 85004
Office: 602.379.6958
Fax: 602.379.6462

Physical Address: Same

District Four Headquarters: BIA-OJS

Mailing Address: 1001 Indian School Road NW
Albuquerque, NM 87104
Office: 505.563.3882
Fax: 505.0563.309

Physical Address: Same

District Five Headquarters: BIA-OJS

Mailing Address: PO Box 30757
Billings, MT 59107
Office: 406.657.5936
Fax: 406.657.5930

Physical Address: 490 N. 31st, STE 204
Billings, MT 59107

District Six Headquarters: BIA-OJS

Mailing Address: 545 Marriott Drive, Suite 750
Nashville, TN 37214
Office: 615.564.6600
Fax: 615.564.6601

Physical Address: Same

District Seven Headquarters: BIA-OJS

Mailing Address: 2001 Killebrew Drive
Suite 121
Bloomington, Minnesota
Office: 952.851.5431
Fax: N/A

Physical Address: Same

District Eight Headquarters: BIA-OJS

Mailing Address: 911 NE 11th Avenue
Portland, OR 97232
Office: 503.231.2283
Fax: 503.231.2288

Physical Address: Same

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District Nine Headquarters: BIA-OJS

Mailing Address: 2800 Cottage Way, Rm. W-2820
Sacramento, California 95825
Office: 916-978-6057

Physical Address: Same

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APPENDIX F

BIA Wildland Fire Investigation Kit Recommended Contents

Various types of evidence sealing tape	Various types of evidence labels
Evidence collection brown paper bags	Re-closable evidence plastic bags
Evidence slide boxes	Glass evidence jars
Arson evidence metal cans (Pint, Qt, Gallon)	Disposable tweezers
12 rolls of vinyl flagging (assorted colors)	Yellow, blue, white, and red flag stakes
Hand held magnifying glass	Photo gray rulers and reference kits for photography
Photo tents or other evidence labels for photography	2 - Clipboards
Drawing paper, notebook paper	Pencils
Pens	Flagging tape of various colors
300 foot metal measuring tape ft. and in.	Crime scene barrier tape
Nitrile gloves	Stringing kit for onsite grids
Large flashlight	Tape recorder optional
Magnetic compass	Curved metal forceps
Permanent markers Sharpies	Large magnet
Soap cleaner Fantastic cleaner	Compact binoculars
35 mm camera with flash	Digital camera with flash
Set of BIA Origin and Cause Field Reports	Carpenters tape 20 foot

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Aluminum nails (3 inch) for establishing reference points	Hatchet
12 inch ruler	Yardstick
Metal trowel	14 inch stakes for lane search grids (at least 8)
100 foot logger's tape or reel tape	Lumber crayon
Spray paint	Secure storage bins for transport of evidence to evidence locker or crime lab
8 ½" X 11" sheet of flat metal for basal lift	Roll of paper towels
Box of cotton to line slide boxes	Wire cutters
Sterile gauze pads for collecting DNA samples	Canning Jar lids for identifying Reference Points (RP) which will be buried at RP
Pocket Knife	Antiseptic Hand Cleaner (Blood borne Pathogens)
Microbial hand cleaner	Belt weather kit or Kestrel
Hand Compass	Staple Gun or Hammer
GPS unit is optional but beneficial	Back Pack to be used when walking into a fire scene
Pelican Case large enough to carry all contents	

The investigator is responsible to ensure that batteries, film, and all other incidentals are stocked in the kit at time of dispatch. The evidence collection tools should be cleaned and sealed in the kit prior to dispatch. The sealed kit should be photographed upon arrival at the fire scene.

APPENDIX G

BIA Wildfire Investigation Sample Delegation of Authority



United States Department of the Interior BUREAU OF INDIAN AFFAIRS

Date:

Memorandum

TO: XXXX, Chief Fire Investigator,

FROM: XXXX, Regional Director, XXXXX Region

SUBJECT: Delegation of Authority

You are designated as team leader for Interagency Arson Task Force assigned to work on the XXXXX Indian Reservation. As the team leader, you will have authority and responsibility to coordinate with Tribal, State and Federal law enforcement officials. In addition you will provide the following items:

- 1) Provide direction to staff needed surveillance and investigation positions through the Incident Resource Order process.
- 2) Conduct the work of the Team with efficiency and effectiveness, and with emphasis on the personal safety of team members.
- 3) Ensure the team adheres to all federal, state and local laws, regulation and ordinances. These laws include, but are not limited to: state motor vehicle operations regulations, cultural and archaeological protection laws, health and welfare regulations, and environmental protection and hazardous materials laws.
- 4) Ensure wildland fire Investigation reports meet Interagency standards.
- 5) When the wildland fire cause is criminal, and there is an injury, fatality or real property damage (including timber loss), mark, identify, photograph and protect all evidence and notify the appropriate Law Enforcement authority for the Reservation.

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- 6) Coordinate and if needed conduct interviews and obtain statements of witnesses, firefighters and suspects.
- 7) In a criminal wildland fire investigation on Indian land, original case files will be transferred to the Tribal Law enforcement if criminal investigations are compacted or contracted.
- 8) In a criminal wildland fire investigation on non-Indian land, complete original case files will be transferred to the jurisdictional law enforcement authority.
- 9) A copy of the original file shall be maintained by the lead Wildland Fire Investigator on the XXXXX Reservation. All copies should be clearly marked COPY.
- 10) Establish a record-keeping process to document the Task Force's activities, including: contacts made; information developed and distributed; projects completed; recommendations for further action; lessons learned; and a summary of expenditures.

Requests or questions regarding procurement and other finances should be directed to XXXXXX at the XXXXXX Regional Office. XXXXXX will also be your primary contact and can be reached at XXXXXXXXXXXX.

APPENDIX H

Fire Investigation Closeout Outline

Cover Page: Identifies Agency and/or Tribe, Topic, Date and prepared by.

Introduction: Discusses duration of assignment, requesting unit objectives, and priorities.

Accomplishments: Discusses number of fires investigated, causes, case status such as any referrals to law enforcement, closed etc...

Recommendations: Discusses actions that will aid the unit in future fire investigations and the fire prevention program. It may also address any concerns that may have arisen.

Attachments: May include any documents that are discussed in the recommendations section (e.g. sample fireworks ordinances)

Report should be discussed with Line Officer or Designee at the Close Out meeting or After Action Review.

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APPENDIX I

Wildfire Origin and Cause Determination Report Format

Confidential Cover: CONFIDENTIAL INFORMATION THE RECORDS BENEATH THIS COVER CONTAIN CONFIDENTIAL INFORMATION, AND ARE TO BE SAFEGUARDED FROM UNAUTHORIZED DISCLOSURE. THIS COVER MUST BE ATTACHED AT ALL TIMES WHEN THE INFORMATION IS REMOVED FROM SECURE FILES.

Fire Information: This consists of the incident name, number, date, time reported, location, person conducting the investigation, person submitting the investigation report, date report is submitted, and a signature line.

Investigation: This is a description of the investigation. It includes a brief description of when the fire was reported, the suppression organization, fuels involved. It should then focus on the actions and procedures the fire investigator(s) employed to conduct their investigation.

Conclusion: This is a brief description of the findings and cause determination.

Investigation Status: This is a brief statement of what the investigators are doing with the report generated from the investigation. The investigation can only fall into one of three categories (see Chapter 5, section 5.3.1).

Dispatch Information: This is a very brief description of how the fire was reported and who sent what to the fire. The report should include a contact number for the responsible dispatch office.

Contact Information: This is a listing of the persons contacted as a result of the incident with their contact information.

Damages and Cost Recovery: This is a brief statement describing the damages and cost recovery potential (if any) as a result of the wildfire and the investigation findings.

Property and Evidence: This is a description of any property and evidence identified and collected as a result of the incident and the investigation. It should also include a statement if the chain of custody has changed.

Attachments: This is a list of documents attached to the report. I should include photos, photo log, evidence log (if applicable), DI-1202's, weather data (as appropriate), fire investigation field forms and notes.

Copies of Report Distributed to: This is a list of people the author is giving copies of the investigation report to.

Note: See resource disks for templates of field reports mentioned in this section.

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