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Issue Brief

Colorado State Forest Service Indirect Cost Assessment

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Description of Issue

The Colorado State Forest Service (CSFS) places an indirect cost assessment of 23 percent on top of all invoices submitted to it by local agencies for payment for resources used to suppress wildfires. This indirect cost assessment is also applied to invoices submitted by the CSFS to counties when a county uses state resources in the suppression of wildland fires, and it is applied to grants managed by the CSFS (where indirect costs are an allowable expense).

The Colorado State Fire Chiefs Association (CSFCA) and the County Sheriffs of Colorado (CSOC) understand the need to recoup expenses for services provided and recognize that all state agencies have an indirect rate plan. However, the CSFCA and CSOC believe the indirect rate assessed by the CSFS is excessive and not justifiable.

With annual appropriations to prepare for and respond to wildland fires totaling about \$3 billion at the federal level alone,¹ major emphasis is placed on cost-containment. The CSFS's indirect cost assessment policy is counterproductive to this goal as it significantly increases the cost of fire suppression and adds little or nothing to fire suppression capability. It also reduces the amount of money available for mitigation, suppression, and pass through to local agencies.

The CSFS's indirect cost assessment policy is also causing the unintended consequence of pricing local fire resources out of the competition for national wildland fire resource assignments. In the face of cost-containment requirements, incident commanders and interagency dispatch centers are making resource ordering decisions on large fires based upon the cost of the resource. With a 23 percent indirect cost assessment placed on top of actual costs, Colorado resources are at a competitive disadvantage for national wildland fire resource assignments.

Background Information

Colorado Fiscal Rules require that state agencies “prepare a documented indirect cost allocation or indirect cost rate proposal/plan that assigns indirect costs to their programs, activities, and services relative to their benefits received from the activities whose costs are being allocated or on another equitable relationship. The allocated costs shall be used as the basis of recovering indirect costs from the federal government, determining fees for program services and activities, and assessing the cost effectiveness of a program or activity.”²

The CSFS is a “Special Unit” of the Warner College of Natural Resources within Colorado State

Definitions

Direct Cost - A cost incurred by a state agency that exclusively benefits a specific cost objective and that may be readily identified with the same specific cost objective.

Indirect Cost - A cost incurred by a state agency that does not exclusively benefit a specific cost objective and that cannot be readily identified with the same specific cost objective, and, therefore shall be allocated to cost objectives on some basis of assumed service/benefit or other equitable distribution basis.

¹ Wildland Fire Management: A Cohesive Strategy and Clear Cost-Containment Goals Are Needed for Federal Agencies to Manage Wildland Fire Activities Effectively, GAO Report GAO-07-1017T (June 19, 2007). See: www.gao.gov/new.items/d071017t.pdf.

² Colorado State Fiscal Rule, Rule 8-3 (Cost Allocation Plans). See: <http://www.colorado.gov/dpa/dfp/sco/FiscalRules/Archive/7-1-06/ch8.pdf>.

University (CSU). The U.S. Department of Health and Human Services (HHS) is the federal cognizant agency responsible for establishing annual indirect cost rates for CSU, including a rate for off-campus activities such as fire suppression. The approved indirect cost rate for off-campus CSFS activities is currently 23 percent.³

One of the services performed by the CSFS, to which this indirect rate is applied, is the processing of requests for payment from local jurisdictions for wildland fire suppression services to the responsible federal land management agency.

It is important to note that the CSFS performs these billing services by virtue of being the signatory to the Interagency Cooperative Fire Management Agreement between the State and the various federal land management agencies. There is no statutory requirement that the CSFS perform this service.

In 2009, which was a relatively light year for fire assignments, the CSFS processed 329 invoices from 103 Colorado cooperators totaling \$2.63 million.⁴ The CSFS indirect assessment on these invoices alone would have generated \$604,900 for CSU. This does not include the indirect costs collected for other CSFS programs and services.

This indirect cost assessment is also applied to invoices submitted by the CSFS to counties when a county uses state resources in the suppression of wildland fires, and it is applied to grants managed by the CSFS (where indirect costs are an allowable expense).⁵

CSFCA Efforts to Address the Indirect Cost Assessment

The first formal attempt by the CSFCA to address the CSFS's indirect cost assessment was in a January 4, 2008 letter to CSFS Director Jeff Jahnke,⁶ the pertinent part of which read:

"It has come to the attention of the CSFCA Board of Directors that the Colorado State University, parent organization for the Colorado State Forest Service, places an indirect cost assessment of 23% on top of all invoices submitted by local agencies for reimbursement. While the CSFCA recognizes that all state agencies have an indirect rate plan, the rate assessed by CSU is excessive, particularly in light of the fact that it only compounds the cost of fire suppression and adds nothing to fire suppression capability."

³ CSU Federal Indirect Cost Rate Agreement – 2009. See: http://www.colofirechiefs.org/wildfire/CSU_Rate_Agreement.pdf.

⁴ 2009 Wildfire Preparedness Fund Report to the Governor, Colorado State Forest Service (undated). See: http://www.colofirechiefs.org/wildfire/2009_Preparedness_Report.pdf.

⁵ It is important to note that CSFS did not always attach the indirect cost to county fires. This is a practice that was implemented some 5 or 6 years ago, after the departure of the former CSFS Director, Jim Hubbard

⁶ Letter to Jeff Jahnke, Director, Colorado State Forest Service, RE: Colorado State Forest Service Proposed Standard Equipment Rates, January 4, 2008. See: www.colofirechiefs.org/CSFCA%20Documents/CSFS_Letter.pdf.

OMB Circular A-21

The cost principles for educational Institutions are contained in OMB Circular A-21. OMB Circular A-21 defines indirect costs as "those costs that are incurred for common or joint objectives and, therefore, cannot be identified readily and specifically with a particular project or activity. Such costs could include depreciation and use allowances, operation and maintenance expenses, and general administrative expenses."

“The CSFCA intends to educate policy-makers on the impact these indirect cost assessments have on the total cost of fire suppression activities in the State. And, while we understand that the indirect cost assessment is a function of your parent organization, we would respectfully request your support in seeking a change to this practice.”

Director Jahnke responded to the CSFCA inquiry by indicating that he was unable to address the indirect rate issue as it is imposed by the university and necessary to fund those functions provided by CSU to its subordinate units. These include such things as administrative costs (accounting, budgeting, information technology services, and human resource services), risk management, workers compensation, and state-wide indirect costs.

Legislative Interim Committee on Wildfire Issues in Wildland-Urban Interface Areas

At the August 6, 2008 meeting of the Interim Committee on Wildfire Issues in Wildland-Urban Interface Areas, the CSFCA discussed the issues contained in its briefing document, “Wildland Urban Interface Issues – A Fire Service Perspective.” One of the issues presented to the Committee was the excessive indirect cost assessment by CSFS.

Excerpt from CSFCA Wildland Fire Issues Brief⁷

7. Excessive Indirect Cost Assessment by CSFS

The Colorado State University, parent organization for the Colorado State Forest Service, places an indirect cost assessment of 23% on top of all invoices submitted by local agencies for reimbursement. While the CSFCA recognizes that all state agencies have an indirect rate plan, the rate assessed by CSU is excessive, particularly in light of the fact that it only compounds the cost of fire suppression and adds nothing to fire suppression capability.

Recommendation: The CSFCA recommends the reimbursement process for wildland fire assignments be transferred from the Colorado State Forest Service to the Division of Emergency Management [the Division of Emergency Management handles all other reimbursements for disaster response].⁸

During the August 19, 2009 Interim Committee meeting, Director Jahnke presented a memo in which CSFS Director Jeff Jahnke responded to the Interim Committee’s request for information, which included the following explanation:

The Colorado State Forest Service and Colorado State University provide a service to both fire departments and to government entities responsible for wildland fire protection by processing requests for payment for resources used to suppress wildfires. In other words, CSFS pays fire departments for responding to wildfires and then seeks reimbursement from the responsible

⁷ Excerpted from CSFCA Issues Brief “Wildland Urban Interface Issues – A Fire Service Perspective” which was presented to the Legislative Interim Committee on Wildfire Issues in Wildland-Urban Interface Areas on August 6, 2008. See: http://www.colofirechiefs.org/docs/CSFCA_WUI_Issues_v3.pdf.

⁸ This was the recommendation of the CSFCA Wildland Urban Interface Issues Working Group which was convened on July 17, 2008 in Keystone, CO. See: www.colofirechiefs.org/docs/WUI_Issues_Forum.pdf.

jurisdictional agencies. This service requires CSFS to maintain agreements with all parties; to review all invoices submitted by fire departments for correctness, accuracy, and compliance with agreements; to communicate with fire departments to correct errors in submitted invoice documentation; to document all transactions through established business and finance protocol; to issue reimbursement checks; to develop and submit all documents required of the responsible agency needed to reimburse CSFS; and to maintain records required for state and federal audits.

The cost of providing fire billing service to fire departments is charged to the agency responsible for the fire. The indirect cost rate has been negotiated between CSU and the cognizant federal agency. It has been agreed to in agreements between the state and the federal agencies.

Also, according to Director Jahnke, “when a county uses state resources, such as single engine air tankers or inmate crews beyond the time covered by the Wildfire Emergency Response Fund, the CSFS will invoice the county for the costs of the resource and add[s] the indirect cost rate to cover the administrative costs incurred in providing the resource.”⁹

The CSFCA clarified for the Committee that it understood the purpose and need for the indirect cost assessment; that the issue was not that indirect costs are being assessed, but rather that the 23 percent rate is excessive. The CSFCA also advised the Committee that this same rate is being applied to grants managed by the CSFS which significantly reduces the amount of money available for mitigation, suppression, and pass through to local departments.

At the request of Senator Gail Schwartz (D-Snowmass), the Committee directed the CSFS to provide a detailed accounting of what the indirect cost assessment is used for.

CSFS Director Jahnke provided a written response to the Interim Committee in a memo dated August 29, 2008.¹⁰ In this memo, Director Jahnke indicated that:

“The Colorado State Forest Service has the full support of Colorado State University as it provides service to fire departments and federal partners. This full support includes physical infrastructure such as electricity, heat, office space, furniture, etc., and also includes professional support of legal services, contracts and agreements, purchasing, business and finance, and payroll. Additionally, CSFS internally provides the staffing and equipment necessary to provide the service of processing invoices for fire suppression submitted by fire departments. The costs associated with doing this business service cannot be readily attributed only to paying fire bills and are therefore captured as indirect costs.”

The memo also contained a comparison of indirect rates assessed by other Colorado state agencies as well as forest service organizations in other states. However, these comparisons are misleading. For example, the Division of Fire Safety does not assess an indirect rate of 21 percent. The only indirect costs assessed by the Division of Fire Safety are on the personal services portion of grants they receive; and that rate is 12.5%. In addition, the 26 percent indirect rate listed in the CSFS memo as being assessed by Texas A&M is not applied to fire suppression.

⁹ CSFS Memo to Interim Committee on Wildfire Issues in the Wildland Urban Interface, dated August 14, 2008. See: http://www.colofirechiefs.org/wildfire/CSFS_Indirect_Rate_Clarified.pdf.

¹⁰ CSFS Memo to Interim Committee on Wildfire Issues in the Wildland Urban Interface, dated August 29, 2008. See: http://www.colofirechiefs.org/wildfire/CSFS_Indirect_Rate_Clarified.pdf.

The CSFS indirect cost assessment was raised as an issue at the CSFCA Wildland Fire Section meeting of July 24, 2009. CSFS representatives present were asked: (1) why the indirect rate was so high; (2) why this service was assessed on an indirect basis instead of on a direct cost basis; and (3) if there were alternatives to the current system.

Clair Brown, representing the CSFS, indicated that the indirect cost assessment was necessary to account for the services provided by CSU, which includes paying the invoices submitted by local jurisdictions in advance of receiving reimbursement from the responsible federal agency. He indicated that it would be possible for local agencies to bill the federal agencies directly, but the local agencies would experience a significant increase in the time it takes to receive payments. Clair reported that in the average year CSFS processes about \$12 million in billing and that 8 percent of the total 23 percent goes to the CSFS and the remainder goes to CSU for their costs.¹¹

CSFCA/CSOC Forum on CSFS Indirect Cost Assessment

On December 16, 2009 a forum was held on the issue of the CSFS Indirect Cost Assessment between the officers of the CSFCA Wildland Section, members of the CSFCA Board of Directors, and representatives of the County Sheriffs Association (CSOC).

After considerable discussion of the issues a consensus was reached on a recommended course of action to be proposed to the CSFCA and CSOC Board of Directors. Following is a discussion of the issues and the recommended course of action.

Discussion

The CSFCA and CSOC believe the indirect cost assessment by CSU violates the spirit of State Fiscal Rule 8-3 (Cost Allocation Plans) which requires:

“State agencies shall use a cost allocation methodology that assures that the allocations made through the methodology represents a service/benefit or other equitable relationship between the cost of the services provided and the value of the benefits received by users of the services.”¹²

By way of comparison C.R.S. §29-22-104(6)(a) and (b) delegates authority to the Executive Director of the Department of Public Safety to promulgate rules for the reimbursement for costs attributed to hazardous substance incidents. The Colorado State Patrol’s (CSP) Hazardous Materials Section administers the reimbursement program and processes reimbursement claims on behalf of local jurisdictions.¹³ The CSP does not assess a direct or indirect charge against the local jurisdictions portion of a reimbursement claim for providing these services. However, a responsible party may be assessed an indirect cost against CSP’s portion of a reimbursement claim.

¹¹ See minutes of the CSFCA Wildland Fire Section Meeting of July 24, 2009 at: http://www.colofirechiefs.org/wildfire/WFS_Minutes_072409.pdf.

¹² Colorado State Fiscal Rule, Rule 8-3 (Cost Allocation Plans). See: <http://www.colorado.gov/dpa/dfp/sco/FiscalRules/Archive/7-1-06/ch8.pdf>.

¹³ 8 CCR 1507-22, Rules and Regulations Concerning Claims for Reimbursement for the Costs of Handling Hazardous Substance Incidents. See: <http://www.colofirechiefs.org/CSFCA%20Documents/hsicrruleshazmat.pdf>.

On its face, there is no easy legislative solution to this issue. As stated earlier, there is no statutory requirement that the CSFS perform billing services on behalf of local jurisdictions. The CSFS performs this service by virtue of being the signatory to the Interagency Cooperative Fire Management Agreement between the State and the various federal land management agencies.

Furthermore, the Colorado General Assembly is not involved in the setting of indirect rates. Instead, state agencies (including educational institutions) negotiate the indirect cost recovery rate with their federal cognizant agency and submit their Federal Indirect Cost Rate Proposal and approved rate to the State Controller's Office.

A factor that exacerbates the discussion of indirect rates is the fact that the CSFS is not (at least directly) an Executive Branch agency. Because the CSFS is a "Special Unit" of the Warner College of Natural Resources within CSU, the State Forester reports to the Dean of the Warner College of Natural Resources (who, in turn, reports to the University President). A major goal of CSU and its subordinate organizations is to maximize the collection of indirect costs. In fact, a stated goal of CSU is to "Double Indirect Cost Recovery from grant and contract activity by 2015."¹⁴

The reason for this emphasis on indirect cost recoveries is that they help address programmatic needs and are not appropriated by the General Assembly. In 2003, CSU touted the fact that it had earned a record \$30 million in indirect cost recovery (from all sources)¹⁵ and in FY 2005, CSU collected in excess of \$34 million in indirect cost recoveries.¹⁶

The fact that Colorado institutions of higher education have experienced significant reductions in State General Fund appropriations makes it unlikely that the General Assembly would take interest in limiting CSU's authority to collect indirect costs for off-campus CSFS activities. However, consideration might be given to creating the statutory responsibility for managing the Interagency Cooperative Fire Management Agreement within an Executive Branch agency and establishing limits on the indirect costs that may be assessed against this function. What appears on its face to be a duplicative organizational structure within the Executive Branch might provide one opportunity to do this.

Colorado Division of Forestry

House Bill 00-1460, created the State Forestry Division within the Colorado Department of Natural Resources. By statute, the Division of Forestry is headed by the State Forester, with advice and assistance from the Forestry Advisory Board, and staffed by the CSFS.

The statutory responsibility of the Division of Forestry is to monitor the health of all forests in the state, including national and private forests. The Division focuses on forest health, rather than on the revenue generated from forest activities or wildland firefighting. However, from all appearances, the Governor is increasingly looking to the Department of Natural Resources as the lead on all forestry-related issues.

¹⁴ Colorado State University Strategic Plan 2006-2015, Initiative 7: Human and Financial Resources, Key Goal #5. See: http://www.president.colostate.edu/strategicplanning/index.asp?page=ex_summ#ac.

¹⁵ Colorado State Earns Record \$200 Million in Research Funding, Tops \$30 Million in Indirect Cost Recovery, CSU Press Release (October 28, 2003). See: <http://www.news.colostate.edu/Release/301>.

¹⁶ CSU Financial and Compliance Audit for the Year Ended June 30, 2005. See: http://www.colofirechiefs.org/wildfire/CSU_FY2005_Audit.pdf.

The overall federal indirect cost rate for the Department of Natural Resources (DNR) for 2007 was 27.50 percent. However, each Division within DNR has a unique indirect rate based on the overhead expenditures allocated to that division. In 2007, the rate for the individual divisions ranged from a low of 0% to a high of 37.04%.

Other Executive Branch agencies that could be looked at for performing billing services on behalf of local jurisdictions is the Division of Fire Safety within the Colorado Department of Public Safety and the Division of Emergency Management within the Colorado Department of Local Affairs.

Amend the Interagency Cooperative Fire Management Agreement

Another option that should be considered is amending the Interagency Cooperative Fire Management Agreement to specifically allow cooperators (local agencies) the option of either direct billing the appropriate agency for fire suppression costs, or billing through the designated state organization.

The Interagency Cooperative Fire Management Agreement was reviewed and updated in 2006. The termination date is May 24, 2011.¹⁷ However, the Agreement may be amended to: (1) allow local agencies the option of either direct billing the appropriate agency for fire suppression costs, or billing through the designated state organization; or (2) making another state agency responsible for billing the appropriate federal agency for fire suppression costs.

Recommendation

The participants in the CSFCA/CSOC Forum on CSFS Indirect Cost Assessment are recommending the following course of action (some of these activities would occur concurrently):

1. Direct a letter to CSU/CSFS outlining the issues and advising that neither the County Sheriffs nor the fire chiefs will sign Annual Operating Plans (AOPs) unless they contain a provision that the indirect cost assessment may not exceed a set percentage (a maximum of 15% was discussed), and that the indirect cost assessment be reasonable and based on the direct costs of providing the service.¹⁸ The letter to CSU/CSFS will request a meeting a meeting with representatives of CSFS and CSU that have the authority to negotiate a reasonable and acceptable indirect cost rate, and will also advise that other options are being considered, including:
 - a. Drafting an RFP for third party billing services and seeking an amendment to the Interagency Cooperative Fire Management Agreement designating the third party billing service as the representative for processing payment requests;
 - b. Seeking Executive and Legislative Branch support for moving the billing function (and capping indirect cost assessments) from CSU to an Executive Branch Agency;
 - c. Seek an amendment to the Interagency Cooperative Fire Management Agreement to allow local agencies the option of either direct billing the appropriate agency for fire suppression costs, or billing through the designated state organization; and/or

¹⁷ Colorado Cooperative Fire Management Agreement. See: http://www.colofirechiefs.org/wildfire/coop_co.pdf.

¹⁸ In a subsequent meeting with Rich Homann, CSFS Fire Division Supervisor, Rich expressed that it would not be appropriate to include conditions on indirect costs in the AOPs because these are intended as operational and not fiscal agreements. He suggested that, if anywhere, it would be more appropriate to include it in the Cooperative Agreements for Fire Protection between the counties and the CSFS.

- d. Refusal to pay the indirect cost assessment portion of invoices received
2. Meet with the Governor's Policy Office to discuss the issue and potential solutions, including determining the level of support for transferring the function of being signatory to the Interagency Cooperative Fire Management Agreement to an Executive Branch agency (and with it the responsible for billing the appropriate federal agency for fire suppression costs) and limiting the indirect cost rate that may be assessed against the function.
3. Determine if there is legislative interest in sponsoring a bill to transfer the function of being signatory to the Interagency Cooperative Fire Management Agreement to an Executive Branch agency (and with it the responsible for billing the appropriate federal agency for fire suppression costs) and limiting the indirect cost rate that may be assessed against the function.
4. Bring other stakeholder associations (CCI, CML) up to speed on the issue and garner their support for the recommended course of action.

In addition to the recommended course of action on the indirect cost assessment issue, it was the consensus of the participants in this meeting that:

1. Wildland fire should not be treated as a standalone hazard, but should be part of the all-hazards approach to prevention, response and recovery.
2. Consideration should be given to transferring the fire functions of the Colorado State Forest Service to an Executive Branch Agency where they will be an integral part of the State All-Hazards Emergency Operations Plan, more responsive to constituents (and answerable to the Governor and Legislature if they are not more responsive to constituents).

References

Understanding Indirect Costs

www.tgci.com/magazine/Understanding%20Indirect%20Costs.pdf

Colorado State Fiscal Rule

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Colorado Cooperative Fire Management Agreement

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CSFS Indirect Rate Assessment Explained

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CSU Federal Indirect Cost Rate Agreement - 2009

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ISSUE BRIEF: COLORADO STATE FOREST SERVICE INDIRECT COST ASSESSMENT

OMB Circular A-21, Cost Principles for Educational Institutions

<http://www.whitehouse.gov/omb/rewrite/circulars/a021/a021.html>

Wildland Urban Interface Issues – A Fire Service Perspective

http://www.colofirechiefs.org/docs/CSFCA_WUI_Issues_v3.pdf

2008 Interim Committee on Wildfire Issues in Wildland-Urban Interface Areas

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http://www.colofirechiefs.org/docs/Decision_Support_Final_no_appendices.pdf