U.S. FISH AND WILDLIFE SERVICE TRANSMITTAL SHEET

PART	SUBJECT	RELEASE NUMBER
267 FW 1	Reimbursable Agreements Reimbursable Agreements - Policies and Procedures	391
FOR FURTHER INFORMATION CONTACT Division of Finance		DATE March 11, 2002

EXPLANATION OF MATERIAL TRANSMITTED:

This chapter includes the addition of paragraph 1.10D concerning waiver of advance payment provisions for reimbursable agreements with the State of California to implement projects under the CALFED program. In addition, we have revised paragraph 1.6 to reference the availability of FWS Form 3-2210 (Reimbursable Agreement).

Marshall P Jones Jr

Deputy DIRECTOR

FILING INSTRUCTIONS:

Remove:	Insert:
267 FW 1, FWM 362, 01/16/01 (3 pages)	267 FW 1, FWM 391, 03/11/02 (3 pages)

Chapter 1 Reimbursable Agreements - Policies and Procedures 267 FW 1

1.1 What is the purpose of this chapter? This chapter establishes guidance and procedures for the preparation and approval of reimbursable agreements.

1.2 What is a reimbursable agreement? A reimbursable agreement is a contractual relationship under which we provide a product or service to a non-Service party, the costs of which are paid by the recipient.

1.3 Does this chapter cover all agreements? No, this chapter does not cover:

A. Outgoing funds where we provide funds to other parties in exchange for goods and services. These are Federal procurement and Federal assistance; i.e., grants and cooperative agreements. (See 301 FW 5.)

B. Memoranda of Understanding (MOU) or agreements that do not directly involve the transfer of funds, or agreements that only receive or provide in-kind without any transfer of funds. (See 301 FW 5.)

C. Donation agreements by which people and organizations give funds, property, or volunteer services to us. (See 260 FW 4.)

1.4 What are authorities for reimbursable agreements?

A. The Economy Act (31 U.S.C. 1535). Authorizes Federal agencies to perform work or furnish materials to each other on a reimbursable basis. The performing agency may incur obligations or expenditures for another agency after a reimbursable agreement is executed and before payment is received. The Secretary of the Interior has delegated this authority to the Director.

B. Intergovernmental Cooperation Act (31 U.S.C. 6505). Authorizes Federal agencies to provide specialized or technical services to State and local governments. Under Federal regulations, a Federal agency must receive a valid reimbursable agreement and advance payment before incurring obligations and expenditures. The Secretary of the Interior has delegated this authority to the Director.

C. Appropriations Act for the Department of the Interior and Related Agencies. Beginning in Fiscal Year 1999, annual appropriations act language for the Resource Management account authorizes us to enter into reimbursable agreements with private entities. The Director has delegated limited authority.

D. Appropriations Act for the Department of the Interior and Related Agencies, 2000. Public Law 106-113 provides permanent authority to us to: (1) credit the Resource Management account for any advance payment received under reimbursable agreements with private entities, and (2) carry out reimbursable work for State, local, and tribal governments without advance payments under certain circumstances (see paragraphs 1.10 and 1.11).

E. House Report 106-222 and Senate Report 106-99. The House and Senate Committees on Appropriations established specific conditions for us to use the authority to incur obligations and expenditures in advance of receiving payments under reimbursable agreements with State, local, and tribal governments. The Director must approve all agreements with advance obligational authority.

F. Office of Management and Budget (OMB) Circular No. A-34, Budget Execution. Section 11 provides guidance on reimbursements for providing goods and services between Federal agencies, reimbursements between Federal agencies and non-Federal entities, and advance payments from public (non-Federal) entities.

1.5 Who is authorized to enter into reimbursable agreements?

A. Members of the Service Directorate may approve reimbursable agreements with Federal agencies and State, local, and tribal governments for activities within their assigned areas of responsibilities. They may delegate this authority to lower levels of their organizations, but no lower than Deputy Assistant Directors for the Washington Office and Assistant Regional Directors for the Regional Offices.

B. See paragraphs 1.10 and 1.11 for limitations on members of the Service Directorate to approve reimbursable agreements with State, local, and tribal governments that do not have an advance payment clause and reimbursable agreements with private entities.

C. Consistent with the Natural Resource Damage Assessment and Restoration (NRDAR) policy (521 DM 3.2), the Authorized Official with the concurrence of the Director and Solicitor can approve NRDAR agreements with private entities. We limit this authority to funds from the Interior NRDAR account; all other accounts defer to authority listed in paragraph 1.4D and limitations listed in paragraphs 1.10 and 1.11.

1.6 What format should I use for reimbursable agreements? The paying agency will determine the format of the written contractual reimbursable agreement. This is especially the case with other Federal agencies who will utilize their own agency's procurement format. For example, Department of Defense agencies use a Military Interdepartmental Purchase Request (MIPR) and other agencies may use purchase orders or interagency agreements, etc. Regardless of the format, you must include the information required in paragraph 1.7. You may provide the required information as an attachment if there are space limitations. If the Government or private entity does not have a standard agreements form and format, you may use FWS Form 3-2210, if it is mutually agreeable between parties, and you may alter it as necessary to meet individual requirements.

1.7 What must I include in a reimbursable agreement?

A. Authorities. You must cite two different types of legal authorities:

(1) The programmatic authority (e.g. Endangered Species Act or Fish and Wildlife Coordination Act) that enables the Service to provide the good(s) or service(s) requested.

(2) The appropriate authority for entering into the agreement, as listed in paragraph 1.4.

B. Scope of Work. You must outline the statement of work to be performed, including services and products that the Service will deliver, as well as the agreement amount, payment terms and schedule, performance period, budget period, and project period.

C. Payment Terms and Schedule.

(1) Our policy is to receive advance payment for reimbursable work whenever possible. We must receive advance payment for all reimbursable agreements with private entities.

(2) If a reimbursable agreement with a State, local, or tribal government does not require advance payments in accordance with paragraph 1.4D, you must include the payment terms and schedule in the agreement so that payments occur within 90 days of the original request by the Service for payment (see paragraph 1.10).

D. Agreement Amount. The total amount is the sum of the Service's direct and indirect costs (see 264 FW 2).

E. Indirect Costs. If you plan to seek an exception to Service policy for indirect cost recovery, you must comply with the policy and procedures in 264 FW 5. You must obtain an exception before submitting agreements for signature.

F. Accounting Information. Obtain a subactivity project number from the Cost Accounting Section of the Finance Center. You must include this number and the requesting party's agreement number in the agreement along with the requesting party's tax identification number or Dun and Bradstreet number.

1.8 Who reviews and signs reimbursable agreements? A Contracting Officer will review all contracts and approve them for contractual sufficiency. Individuals from both entities authorized to enter into contractual agreements must sign the agreement.

1.9 Where do I send the signed agreements? Submit the signed agreement along with a Reimbursable Agreement Data Form (FWS Form 3-2058), through the servicing Regional Finance Office to the Cost Accounting Section of the Finance Center within 30 days of any financial obligation.

1.10 How can I waive advance payment for agreements with State, local, and tribal governments?

A. The Director must approve waivers of advance payment.

B. The Assistant Director or Regional Director will forward a transmittal memorandum (see Exhibit 1) to the Director through the Assistant Director - Business Management and Operations. The Assistant Director - Business Management and Operations will forward the memorandum to appropriate offices for review and approval.

C. Include the following information in the transmittal memorandum:

(1) How this agreement will benefit the national mission of the Service.

(2) Why the recipient cannot make advance payment(s) for the services or products that the Service will provide.

(3) List of agreements with the recipient over the past 3 to 5 years.

(4) History of timely payments by the recipient that demonstrate credit worthiness, or other evidence of financial stability of the organization.

D. We waive advance payment provisions for all reimbursable arrangements with the State of California and subsequently the National Fish and Wildlife Foundation to implement projects under the CALFED program. This waiver complies with 16 U.S.C. 754b and c and 31 U.S.C. 6505.

1.11 What is needed for approval of a reimbursable agreement with a private entity?

A. Regional Directors may approve reimbursable agreements with private entities when the agreement does not exceed $10,000. Draft a memorandum for the Regional Director's signature and provide a copy to the Assistant Director - Business Management and Operations (see paragraph 1.11C).

B. Regional Directors (or Authorized Officials) may approve reimbursable agreements in excess of $10,000 during the initial phase of a spill response action.

(1) It is procedure to offer the Responsible Party (RP) the option to pay for cleanup expenses without involving the U.S. Coast Guard and/or the judicial system. The RP has 48 hours to make a decision on whether or not to accept the Service's estimate for our response costs. At this time, the RP must be prepared to present payment to the Service. If the RP decides to forego our initial estimate, the Oil Spill Liability Trust Fund will be activated and you must follow the procedures in this section.

(2) When the agreement exceeds $10,000, the Assistant Director or Regional Director must forward a memorandum (see Exhibit 2) to the Director through the Assistant Director - Business Management and Operations. The Assistant Director - Business Management and Operations will forward the memorandum to appropriate offices for review and approval.

C. Include the following information in the transmittal memorandum:

(1) How this agreement will benefit the national mission of the Service.

(2) Why the private entity needs the Service's expertise.

(3) Summary of scope of work and cost of agreement.

(4) Assurance that the private entity is not a prohibited source.

1.12 What is a prohibited source? Exercise caution regarding the acceptance of funding from a person or entity that could reflect adversely on the Department or the Service. If you have any doubts as to whether or not we should contract with the entity, coordinate with the Office of the Solicitor. Do not accept funding from persons and entities who:

A. Have litigation pending with, or have or are seeking to obtain a contract, lease, grant or other business, benefit or assistance from the Service. Excluded from this provision is funding obtained from potentially responsible parties for responses to oil spills or release of hazardous substances under the authorities of CERCLA, OPA, the CWA, the National Contingency Plan (NCP), or other similar authorities.

B. Appear to be offering funding with the expectation of obtaining advantage or preference in dealing with the Department or any of its agencies.

1.13 When can work on a reimbursable agreement begin?

A. In accordance with 31 U.S.C. 3512 and OMB Circular A-34, we must properly record and account for all transactions. For charges to be accounted for as reimbursable, you must have a signed reimbursable agreement. Avoid incurring any costs until both the Service and the recipient agency sign a reimbursable agreement. For agreements with private entities, you may not incur any costs until the Service receives and deposits an advance payment (see paragraph 1.11).

B. We will charge the responsible organization's current appropriation for expenditures that are made prior to a commitment by the other party and that we cannot recover.

C. If expenditures must begin prior to completion of an agreement, follow the steps below:

(1) Request a project number from the Cost Accounting Section of the Denver Finance Center. At this time, inform them that this agreement needs to be loaded by a specific date.

(2) We will give organizations 90 calendar days to finalize agreements. After this 90-day period, we will remove from FFS all projects not supported by a signed agreement. You must charge to a legally available direct funding source of the responsible organization all expenditures for work performed or to be continued.

(3) It is the Regions' responsibility to monitor the progress of estimated projects on file. Regional Budget and Finance Officers should use the monthly FFS report to track projects within their Region and maintain emphasis on completing agreements.

(4) The Washington Office Division of Finance and the Denver Finance Center will remove projects from FFS that remain in estimated status longer than 90 days. If no payment is received in an additional 90 days, we will charge the responsible organization for all outstanding expenditures and any applicable indirect costs.

(5) At the close of each fiscal year, all reimbursable projects must be supported by a signed agreement. We will transfer to a legally available direct funding source of the responsible organization all charges recorded to a reimbursable project number that is not supported by a signed agreement

1.14 Financial Accountability. The Service office responsible for the reimbursable activity will ensure that the obligations and expenditures incurred against the agreement are accurate and necessary to complete the work. The Finance Center will provide the responsible office with monthly reports of undelivered orders and expenditures charged against the project. The Finance Center will issue standard billings quarterly; however, it will bill the reimbursing entity on a monthly basis if included in payment terms.

1.15 How are advance payments processed?

A. If the paying agency issues payment before the Service signs the agreement, forward the agreement and payment to the responsible servicing Regional finance office.

B. If the paying agency issues payment after both the Service and the requester sign the agreement, a designated collection officer must complete a collection transmittal, attach it to the payment, and forward it to the Service's lockbox in accordance with cash accountability guidelines. (See 261 FW 1, Cash Accountability.)