

**FISH AND WILDLIFE SERVICE
FINANCE**

Finance **Part 264 Cost Recovery and Reimbursable Agreements**

Chapter 2 Reimbursable and Intergovernmental Agreements – Policies and Procedures 264 FW 2

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

2.2 What is the scope of this chapter?

A. This chapter covers all reimbursable (buy/sell) transactions including:

(1) Reimbursable agreements where a non-Service party pays us to provide products or services, and

(2) Intergovernmental and intragovernmental agreements where the Service provides funds to another bureau or Federal agency to provide us products or services.

B. The chapter does not cover agreements for:

(1) Federal procurement and Federal assistance, i.e., contracts, grants, and cooperative agreements (see 301 FW 5);

(2) Memoranda of Understanding (MOU) or other agreements where we do not transfer funds or property (see 301 FW 5);

(3) Donation agreements where people and organizations give funds, property, or volunteer services to us; and

(4) Funding and participation agreements with potentially responsible parties for natural resource damage assessment and restoration activities (see 264 FW 3).

2.3 What is the difference between a reimbursable agreement, an intergovernmental agreement, and an intragovernmental agreement? These terms are associated with agreements where one entity agrees to perform work on behalf of another entity, and is subsequently reimbursed for all costs incurred. While other agencies may use these terms interchangeably, we define them as follows:

A. A reimbursable agreement is a contractual relationship where we **provide** a product or service to a non-Service party, and the recipient of the product or service pays us.

B. Intergovernmental agreements are agreements where we contract with other Federal agencies to **obtain** products or services.

C. Intragovernmental agreements are agreements where we contract with other bureaus **within the Department** to **obtain** products or services.

D. The rules for intergovernmental agreements and intragovernmental agreements are the same, so we will refer to them both as “intergovernmental agreements” throughout this chapter.

2.4 What are the authorities for this chapter? See 264 FW 1, Exhibit 1 for the authorities for the chapters in Part 264.

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2.5 Who is responsible for reimbursable agreements and intergovernmental agreements? Table 2-1 identifies responsibilities and who approves reimbursable and intergovernmental agreements.

Table 2-1 Responsibilities and Approvals		
Authorized Employee	Agreement Type	Responsibility
Director	Reimbursable	<p>(1) Ensures we have a reimbursable agreement policy in place;</p> <p>(2) Approves reimbursable agreements with local and tribal governments and private entities over \$250,000, and</p> <p>(3) Approves waivers of advance payment from local and tribal governments for agreements over \$250,000 and from foreign governments for any amount.</p>
	Intergovernmental	Ensures we have intergovernmental agreement policy in place.
The Assistant Director – Business Management and Operations	Reimbursable	<p>(1) Recommends changes to the reimbursable agreement policy;</p> <p>(2) Ensures Office of Management and Budget (OMB), Treasury, and Departmental reimbursable policies are part of Service policy; and</p> <p>(3) Ensures staff record and process reimbursable agreements in the Service's accounting system.</p>
	Intergovernmental	<p>(1) Recommends changes to the intergovernmental agreement policy;</p> <p>(2) Ensures OMB, Treasury, and Departmental intragovernmental transaction policies are part of Service policy; and</p> <p>(3) Ensures staff record and process intergovernmental agreements in the Service's accounting system.</p>
Assistant Directors and Regional Directors	Reimbursable	<p>(1) Ensure that the Service has or can obtain the resources necessary to deliver the products or services within the time frames stated in the agreements;</p> <p>(2) May sign reimbursable agreements with Federal agencies and State, local, and tribal governments for activities within their area of responsibility within the limitations described in sections 2.12;</p> <p>(3) May waive advance payment for reimbursable agreements with State, local, and tribal governments within the limitations described in section 2.16; and</p> <p>(4) May delegate signature authority in their organizations, but no lower than Deputy Assistant Directors for the Washington Office and Assistant Regional Directors for the Regional offices.</p>
	Intergovernmental	<p>(1) May sign intergovernmental agreements within the limitations described in section 2.12, and</p> <p>(2) May delegate signature authority in their organizations, but no lower than Deputy Assistant Directors for the Washington Office and Assistant Regional Directors for the Regional offices.</p>

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Table 2-1 Responsibilities and Approvals		
Authorized Employee	Agreement Type	Responsibility
Warranted Contracting Officers through the servicing Regional Contracting and General Services (CGS) Office or the Washington Division of Contracting and Facilities Management (CFM)	Reimbursable	Review reimbursable agreements at the Regional Budget and Finance Office's request.
	Intergovernmental	Must sign and process agreements where the Service gives the other Federal agency a specific statement of work that includes milestones and due dates that will adversely impact Service mission goals if they are not met.

2.6 How does the Service determine how much to charge for a reimbursable project?

A. We must estimate the direct costs associated with completing the work the paying entity wants us to perform.

B. Once we identify direct costs, we apply the appropriate cost recovery rate to determine the total estimated cost of the project (see 264 FW 1, Exhibit 4).

C. You can use FWS Form 3-2377, Independent Government Cost Estimate as a tool for developing an independent cost estimate. We may use other methods for developing cost estimates as long as we document the methodology and include it in the reimbursable agreement files.

2.7 Why is it necessary to develop an independent cost estimate for a reimbursable project? If we don't develop an independent cost estimate, we don't have a basis for determining if the project can be completed within the time and cost limits in the statement of work. This could mean that we would get significantly less than what it actually cost us to provide the goods and services in the agreement. This should never happen, but if it does, the difference between the project's funded amount and actual costs are taken out of a program's appropriated funds.

2.8 What if the paying entity cannot afford to provide as much funding as we estimate the project will cost? If the paying entity cannot provide the full cost of the project as originally described, we should work with them to adjust the scope of work so that the work is commensurate with the amount of funding available.

2.9 May the Service agree to fund some of the work itself? While programs may use appropriated funds to perform mission-related activities that augment work identified in a reimbursable agreement, those activities should not be in the agreement statement of work. The reimbursable agreement should only identify the work that the paying entity is funding. We should describe any additional work the Service is funding in a Memorandum of Understanding with the paying entity.

2.10 What format does the Service use for reimbursable and intergovernmental agreements?

A. The paying entity determines the format of the written contractual agreement. We must ensure the elements in section 2.11 and Exhibit 1 are in the agreement. In some cases, especially with reimbursable agreements with other Federal agencies, the other entity uses their own format. For example, the Department of Defense uses a Military Interdepartmental Purchase Request (MIPR), while other Federal agencies may use purchase orders. We may sign these agreements as long as they contain the required elements listed in section 2.11 and Exhibit 1.

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B. We must use FWS Form 3-2366, Department of the Interior Inter/Intra-Agency Agreement for intergovernmental transactions when we are the paying entity.

2.11 Are there specific clauses that the Service must include in reimbursable and intergovernmental agreements? Yes.

A. Reimbursable agreements must include the following disputes clause:

“If the Buyer cancels the agreement, the Seller may collect costs incurred prior to the cancellation of the agreement plus any termination costs.”

B. Intergovernmental agreements must include:

(1) The following clause explaining the right to modify, cancel, or terminate the agreement:

“Either party may propose modifications to this Agreement. This Agreement is binding when the Service Contracting Officer signs it. You must send requests to extend the period of performance to the Contracting Officer *sixty (60) days before the last day of the period of performance*. After the agreement expires, the Contracting Officer will not grant requests for extension. You must send other modification requests to the Contracting Officer *no less than thirty (30) days before required execution*.”

(2) The following alternative dispute resolution clause:

“If a disagreement arises on the interpretation of the provisions of this agreement, or amendments or revisions to the agreement that the parties cannot resolve at the operational level, each party must state in writing the area(s) of disagreement and give the statement to the other party for consideration. If the parties do not reach agreement or interpretation within thirty (30) days, they must send the written description of the disagreement to their respective higher officials for appropriate resolution.”

(3) The following clause about order cancellations:

“The Buyer may cancel or terminate the agreement with written notice. If the Buyer cancels or terminates this agreement, the Buyer is liable only for payment for services rendered before the effective date of the cancellation or termination.”

(4) You may need to include additional terms and conditions. Check with your servicing Contracting Office to ensure the Service’s interests are protected.

2.12 Who reviews and signs agreements? See section 2.5 for information about signature authorities.

A. Reimbursable Agreements:

(1) The project manager responsible for delivering the goods or services defined in the reimbursable agreement must review and ensure the terms and conditions are complete. The project manager or Regional Office Budget and Finance reviewer may ask a Contracting Officer to review the agreement for its contractual content before the Service officials we describe in section 2.5 sign them. You must ensure that the person signing has the authority to enter into contractual agreements.

(2) Regional Directors and Assistant Directors may sign reimbursable agreements with:

(a) Other Government agencies and states for any amount, and

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(b) Local and tribal governments and private entities when the agreement is no more than \$250,000 subject to the restrictions in sections 2.16 and 2.18.

(3) The Director must sign reimbursable agreements with local and tribal governments and private entities for more than \$250,000.

B. Intergovernmental Agreements:

(1) A warranted Contracting Officer from the Regional CGS/CFM office must sign intergovernmental agreements if the Service provides a specific statement of work to the Federal agency that includes milestones and due dates that will adversely impact Service mission goals if they are not met.

(2) Regional Directors or Assistant Directors may sign agreements that primarily provide funds in support of a project that:

(a) Is general in nature,

(b) Does not have specific due dates,

(c) Will not negatively impact Service goals if it is not completed within a specified timeframe (e.g., intergovernmental travel agreements), and

(d) Is obligated outside of the Service's procurement systems (Interior Department Electronic Acquisition System (IDEAS) or PRISM).

(3) The Regional Director or Assistant Director may delegate signature authority in their organizations, but no lower than Deputy Assistant Directors for the Washington Office and Assistant Regional Directors for the Regional offices.

2.13 Where do I send a signed agreement?

A. Reimbursable Agreements. Within 30 days of the date the reimbursable agreement was signed, send it and a Reimbursable Agreement Data Form (FWS Form 3-2058) to your servicing Regional Finance Office. The Regional Finance Office reviews and approves the package and returns it to you. You must then send it to the Cost Accounting section of the Division of Financial Management – Denver Operations.

B. Intergovernmental Agreements. Send signed intergovernmental agreements to the issuing bureau or agency. After the issuing bureau or agency signs the agreement, send a fully executed copy to the servicing Region CGS/CFM office. If the CGS/CFM office does not need to process the agreement, the originating office obligates the funds directly in the Federal Financial System. You must then send a fully executed copy of the agreement to the Regional Budget and Finance office.

2.14 What is the impact of the Economy Act on the funds we receive through a reimbursable agreement? The Economy Act:

A. Requires the buying agency (the one paying the Service) to de-obligate any funds that haven't been obligated by the time the funds expire. Once the buying agency de-obligates the funds, the funds are no longer available to reimburse the Service for any future work performed. As a result, using the Economy Act as the authority for providing reimbursement requires us to incur all our costs (by either obligating costs to a contract or incurring payroll costs) before the buying agency's funds expire. Because payroll

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costs cannot be obligated, all costs for employee salaries must be *incurred* by the date the buying agencies' funds expire.

B. Imposes restrictions on us as to when we must complete the reimbursable work, separate from the period of performance in the statement of work. If the buying entity cites the Economy Act as their authority to pay us, **and** the funds they are using to reimburse us expire at the end of the current fiscal year (the funds citation listed on the agreement will indicate when the funds expire), we must either:

- (1) Properly obligate the funds against a procurement contract, or
- (2) Complete performance of the work before the buying agency's funds expire.

2.15 What is the impact of the Economy Act on the funds we provide to another agency through an interagency agreement? The Economy Act requires us to de-obligate any funds that have not been obligated or expended by the other agency at the end of the period of availability. For example, if we cite 2-year funding on the interagency agreement, and the other agency does not obligate or expend all the funds within the 2-year period, we de-obligate the difference between the amount we provided and the amount they have obligated and expended. We should only use the Economy Act as our legislative authority in the absence of a more specific statutory authority.

2.16 May the Service waive advance payment for reimbursable agreements with State, local, and tribal governments?

A. Regional Directors and Assistant Directors may approve waivers of advance payment for reimbursable agreements in certain circumstances. They may re-delegate this authority within their organizations, but no lower than Deputy Assistant Directors for the Washington Office and Assistant Regional Directors for the Regional offices. The authority to approve waivers of advance payment is limited to reimbursable agreements with:

- (1) States (no limit on the dollar amount), and
- (2) Local and tribal governments if the agreement is for no more than \$250,000.

B. The Director must approve or deny requests to waive advance payment for reimbursable agreements with:

- (1) Local and tribal governments when the agreement is for more than \$250,000, and
- (2) Foreign governments.

C. We may not waive advance payment of reimbursable agreements with private entities.

D. For waivers of advance payment:

(1) More than \$250,000, the Assistant Director or Regional Director sends a memorandum (see Exhibit 2) to the Director through the Assistant Director – Business Management and Operations. The Assistant Director – Business Management and Operations sends the memorandum to appropriate offices for review and approval.

(2) \$250,000 and below, the Assistant Regional Director should prepare a memorandum to the Regional Director. Send a copy of the approved memorandum to the Assistant Director – Business Management and Operations.

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E. You must include the following information in the memorandum:

- (1) How this agreement will benefit the mission of the Service.
- (2) Why the recipient cannot make advance payment(s) for the services or products that we will provide.
- (3) History of timely payments by the recipient that demonstrate credit worthiness, or other evidence of financial stability of the organization.

F. Attach an advanced copy of the agreement to the memorandum.

2.17 How does the Service process advance payments?

A. If the other party pays us before we sign the agreement, the office that receives payment should send the agreement and payment to their servicing Regional Budget and Finance Office. We discourage other Federal agencies from sending us advance payment for reimbursable work.

B. If the other party pays us in advance after we sign the agreement, the Collection Officer must process the payment according to the collections guidelines in 261 FW 1, Cash Accountability.

2.18 What are the requirements for approval of reimbursable agreements with private entities?

A. Regional Directors and Assistant Directors (or their designees as listed in section 2.5) may sign reimbursable agreements with private entities when the agreement is for \$250,000 or less.

(1) The Project Leader at the field station that will perform the work drafts an approval memorandum for the Regional Director to sign and forwards it to the Regional Program or Budget and Finance Office for processing.

(2) The memorandum should include the information in section 2.18B(1).

(3) A copy of the approved memorandum should be sent to the Assistant Director - Business Management and Operations

B. The Director must sign agreements with private entities that exceed \$250,000 and are not for spill response actions. The Assistant Director or the Regional Director must send a memorandum (see Exhibit 3) to the Director through the offices the agreement impacts and the Assistant Director – Business Management and Operations.

(1) The Project Leader at the field station that will perform the work drafts an approval memorandum for the Regional Director to sign and sends it to the appropriate Regional Program or Budget and Finance Office. The Regional Office sends a copy to the Assistant Director – Business Management and Operations (see Exhibit 3) for processing to the Director. The memorandum should include the following information:

- (a) How the agreement will benefit the mission of the Service,
- (b) Why the private entity needs the Service's expertise,
- (c) Summary of scope of work and cost of agreement, and
- (d) Assurance that working with the private entity will not cause a conflict of interest (see section 2.19).

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(2) After both parties sign the agreement and we collect advance payment, we may perform reimbursable work.

(3) Federal appropriations law prohibits us from waiving advance payment from a private entity.

2.19 What factors should the Service consider when entering into a reimbursable agreement with a private entity? The factors below describe what you should consider when determining whether to enter into a reimbursable agreement with a private entity. The presence or absence of each factor does not force a decision but illustrates what you must consider when evaluating the circumstances.

A. Would the agreement maintain the integrity of the Department's and Service's programs and operations?

(1) Does the agreement appear to be (by its size or circumstance), an attempt to influence regulatory or other Departmental or Service authority?

(2) Does the agreement meet a legitimate Department or Service need?

(3) Is the agreement consistent with, and does not circumvent, law, regulation, or policy?

(4) Could the private entity use the agreement to state or imply the Department's or the Service's endorsement of the private entity or its products or services?

B. Does the agreement maintain the impartiality, and appearance of impartiality, of Departmental and Service employees?

(1) Is the agreement made to a program or in an amount that would influence or appear to influence any significant pending Department or Service decision or action involving the private entity's interests?

(2) Could someone construe the agreement as an actual or an implied commitment by the Department or the Service to take an action favorable to the private entity in exchange for doing work for the private entity?

C. Does the agreement maintain public confidence in the Department's and Service's programs and personnel?

(1) Will the agreement likely result in public controversy?

(2) Are conditions of the agreement consistent with the Department's and Service's policy, goals, and programs?

(3) Does the private entity have any significant known history of violations, whether criminal or civil in nature?

2.20 Must the Service process all grant funding as reimbursable agreements?

A. We must process any grants we receive from Federal sources as reimbursable agreements.

B. We may process a non-Federal grant as either a donation (which we can deposit in the Contributed Funds account) or as a reimbursable agreement.

(1) Donations are not subject to cost recovery requirements. Our policy limits the Assistant Directors' and Regional Directors' delegation authority for accepting donations.

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(2) Non-Federal grants awarded to the Service and processed as reimbursable agreements are subject to applicable cost recovery rates.

C. Generally, grants with significant administrative requirements are more advantageous to process as reimbursable agreements. The factors below describe what you should consider when deciding whether to process a grant as a reimbursable agreement or a donation.

- (1) Does the work associated with the grant require complex billing and reporting requirements?
- (2) Are there recurring costs associated with the grant, such as maintenance of land or equipment?
- (3) Does the grant work require significant management oversight?
- (4) Does the grant work involve coordination with multiple field, Regional, State, or local offices?
- (5) Do you have sufficient administrative staff to adequately monitor grant spending, reporting, and billing?

2.21 When can the Service begin work under a reimbursable agreement?

A. For agreements with other agencies and State, local, and tribal governments, you should avoid beginning work (incurring costs) until both the Service and the other party sign a reimbursable agreement. We need the agreement in place to ensure that we can properly record and account for all transactions (see 31 U.S.C. 3512 and OMB Circular A-11). For agreements with private entities, you must not incur any costs until we receive and deposit an advance payment (see section 2.18).

B. For agreements with State, local, and tribal governments, if we incur charges before we have a signed agreement and we cannot recover the charges in any other way, we charge the responsible Service organization's current appropriation.

C. If you must incur costs before completing an agreement, follow the steps below:

- (1) Request a project number from the Cost Accounting section – Denver Operations. Tell them the date you will have the agreement to load in the financial system.
- (2) We may allow organizations 90 calendar days to finalize agreements. After this 90-day period, the Washington Office Division of Financial Management and Denver Operations must remove from the Federal Financial System (FFS) all projects not supported by a signed agreement. If you are going to continue to perform work, there must be a legally available direct funding source for us to charge to.
- (3) Regional Offices are responsible for monitoring the progress of reimbursable agreements that have not been signed. Regional Budget and Finance Officers should use monthly FFS reports to track projects within their Region and emphasize to staff the importance of completing the agreements.
- (4) If we do not obtain a signed agreement within the 90-day period and we do not receive payment in an additional 90 days, we will charge the responsible Service organization for all outstanding expenditures and any applicable indirect costs.
- (5) At the close of each fiscal year, we must have a signed agreement for all reimbursable projects. *If a signed agreement is not in place at the end of the fiscal year, we will charge all costs incurred to date to the responsible organization's primary funding source.*

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2.22 When does work begin on an intergovernmental agreement? The servicing Federal agency should begin work on an intergovernmental agreement when:

- A. The Service provides a properly executed (signed) agreement form, and
- B. The period of performance starts.

2.23 Who is accountable for ensuring the accuracy of expenditures and receipts charged to a reimbursable agreement?

- A. The Service office responsible for the reimbursable activity must ensure that the obligations and expenditures we incur against the agreement are accurate and necessary to complete the work.
- B. To help them monitor activity, Denver Operations provides the responsible office with monthly reports (FWS63101) of undelivered orders and expenditures charged against the project. The Project Leader responsible for delivering the goods or services listed in the reimbursable agreement must review the reports monthly to ensure that the costs billed to the paying entity are accurate. He/she must sign FWS Form 3-2390, Monthly Review of Reimbursable Project Charges to show the review is complete (kept in the reimbursable agreement file). Denver Operations issues standard bills monthly unless otherwise noted in the agreement.
- C. If the *only* authority cited on the reimbursable agreement is the Economy Act, the exchange of funds does not extend the availability of funds beyond that provided by Congress in the applicable appropriations act. The Economy Act requires the funding agency to de-obligate any funds that have not been paid to the servicing agency prior to the time their funding expires (see sections 2.14 and 2.15). We must be aware of the period of availability of the funds from the funding agency to ensure that we bill costs while the funds are still available for reimbursement. Once the funding agency has de-obligated funds in accordance to the Economy Act, they cannot reimburse us for work completed, even if we performed the work within the period of performance for the reimbursable agreement.

2.24 How does the Service handle intergovernmental travel?

- A. We use the Inter/Intra-Agency Travel Agreement Form (FWS Form 3-2368) to document another agency's funding of a Service employee's travel expenses and to ensure both bureaus or agencies have the necessary information to process the reimbursement. We may use the paying agency's form if it requires the same information as is on FWS Form 3-2368.
- B. We must charge all travel expenses to the correct account during the fiscal year in which they were incurred. Intergovernmental travel is subject to the standard indirect cost rate, unless an exception to policy is obtained, or the other agency processes *all* travel.
- C. If the other agency processes all the travel documents, including filing all voucher information through its own travel system and makes payment directly to the Service employee, the intergovernmental is not subject to cost recovery requirements. However, both parties should complete and sign FWS Form 3-2368 to document the agreement.
- D. If we are the paying office, we process the FWS Form 3-2368 as a Reimbursable Support Agreement and obligate the funds directly in FFS. The other agency's employee should make all travel arrangements through his or her own agency and bill us for reimbursement through the other agency/bureau's reimbursable procedures.

2.25 How do we make payments on an intergovernmental agreement? The bureau/agency that is providing the products or services bills us using the Intergovernmental Payment and Collection System.

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The National Business Center makes payments and processes them against the cost code(s) provided on the intergovernmental agreement form.

2.26 How do we close out reimbursable and intergovernmental agreements?

A. The Service office responsible for the reimbursable activity must notify the requesting agency (buyer) when work and billing is complete and modify FWS Form 3-2058 so that Denver Operations closes out the reimbursable agreement in FFS

B. For agreements billed monthly, final billing must occur within 30 days of completing the work. For agreements billed quarterly, final billing must occur by the end of the quarter following work completion.

C. We recommend that you use of the Intra-Governmental Agreement Completion Report (FWS Form 3-2367) to ensure that we notify the requesting agency that billing is complete.

/sgd/ Rowan W. Gould
DEPUTY DIRECTOR

Date: October 9, 2009