

U.S. DEPARTMENT OF COMMERCE
Office of Inspector General



**PUBLIC
RELEASE**

***NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION***

*OAR's Interagency and Other Special
Agreements Require Additional
Improvements for Compliance*

Final Inspection Report No. IPE-10310 / May 1998

Office of Inspections and Program Evaluations



TABLE OF CONTENTS

EXECUTIVE SUMMARY	i
INTRODUCTION	1
PURPOSE AND SCOPE	1
BACKGROUND	4
OBSERVATIONS AND CONCLUSIONS	8
I. OAR Is Making Progress Toward Achieving Full Cost Recovery	8
II. Despite Some Procedural Changes, Improvements Are Still Needed to Comply with Federal Requirements	10
A. Some agreements fail to cite applicable legal authorities	10
B. Many agreements lack the appropriate level of approval	11
C. Agreements often have incomplete budget information	12
D. OAR does not adequately justify agreements	13
E. Termination dates or review periods are not always defined	17
F. OAR needs to further improve its policies and procedures	18
III. OAR Lacks a Consistent Policy on Legal Review of Agreements	22
IV. OAR Should Develop a Central Database to Inventory and Track Agreements	25
RECOMMENDATIONS	27
ATTACHMENT: Agency response	

EXECUTIVE SUMMARY

Interagency and other special agreements are mechanisms for federal agencies to define terms for performing work for others (reimbursable agreements), acquiring work from others (obligation agreements), or coordinating complementary programs without the transfer of funds (memoranda of understanding or agreement, also referred to as unfunded agreements). These agreements can be between Commerce entities; or between one Commerce unit and another federal agency, a state or local government agency, a university or other educational institution, a not-for-profit organization, or a private party. They involve a significant amount of federal resources, but are not normally subject to the same controls as traditional procurement contracts, grants, or cooperative agreements.

NOAA's Office of Oceanic and Atmospheric Research (OAR) uses such agreements in pursuit of several aspects of its mission. In addition, other federal agencies and non-federal organizations often have similar missions or require information or services from OAR to fulfill their own unique missions. Agreements are one method for these agencies to formally agree to share information, provide needed services, or coordinate their programs to optimize the benefits from each agency's efforts. If properly monitored and controlled, agreements are necessary and beneficial to define the roles and responsibilities of each of the parties so that the greatest return is realized from similar or complementary programs.

This is one report in a series to be issued as part of the Office of Inspector General's Department-wide review of agreements. The purpose of our inspection was to evaluate policies, procedures, and practices being followed at OAR headquarters and field locations in carrying out the responsibilities related to these agreements. This included determining whether OAR and its operating units have resolved recommendations made in a 1996 OIG audit report and whether OAR has improved its preparation of agreements since that report. Overall, we found that OAR does appropriately use agreements to support its mission. Procedurally, OAR has made some improvements in how it prepares, reviews, approves, and administers agreements. Additional changes are still needed to comply with federal, departmental, and agency guidance.

During our review of OAR agreements, we made the following observations:

- ▶ **OAR is making progress toward achieving full cost recovery under its reimbursable agreements**—OAR has taken several actions to address recommendations made in the 1996 audit report that raised concerns about OAR's methodology for recovering costs incurred during reimbursable work. As directed by NOAA, OAR and the other NOAA line offices implemented a time management system in June 1996. In addition, OAR has corrected the improper use of overhead rates by ensuring that its laboratories now only apply approved overhead rates. OAR is also developing systematic processes to establish a valid cost accounting methodology to itemize other reimbursable costs (see page 8).

- ▶ **Despite some procedural changes, improvements are still needed to comply with federal requirements**—There has been mixed improvement since the 1996 audit in how well OAR prepares agreements. OAR still does not (1) consistently cite an applicable legal authority, (2) always ensure the appropriate level of approval for agreements, (3) include total project costs and/or budget summaries, and (4) always prepare written justifications. In addition to following up on these four audit issues, we found that OAR agreements do not always include a termination date or review period.

OAR's Environmental Research Laboratories program has recently improved its internal guidance on agreements that should address some of the deficiencies we discovered. It has prepared a checklist for program and/or administrative staff to follow while preparing agreements. While practical, we believe that the checklist should be supplemented by more thorough policies and procedures for agreements. OAR should also develop a more formal method of ensuring that agreements prepared by other parties are complete before they are signed (see page 10).
- ▶ **OAR lacks a consistent policy on legal review of agreements**—We found that a relatively small number of OAR agreements receive legal review. Currently, neither the Department nor NOAA has any orders or guidelines that establish criteria for when legal review of an agreement is required. Because of the lack of written criteria, the offices and laboratories within OAR have developed their own informal policies on which agreements to send for legal review, ranging from all agreements to no agreements. Keeping in mind the potential burden and delays that could be caused by sending all OAR agreements for legal review, we believe that formal policies and procedures on legal review of agreements should be established (see page 22).
- ▶ **OAR should develop a central database to inventory and track agreements**—OAR currently lacks a central list of all its agreements. Any existing lists are incomplete and are not easily sorted by relevant type of information. We believe that a central database of agreements would be a useful management and administrative tool. OAR could use the information stored in a database to provide input into its strategic planning under the Government Performance and Results Act. A central database could provide basic information, such as how many agreements exist, what agencies and other parties are involved, and total funding through agreements, to help define performance measures and demonstrate results. The database could also be used to help administer and maintain OAR agreements. By having relevant dates in the system, programs could easily identify which agreements are due for renewal, termination, or review (see page 25).

On page 27, we offer a series of recommendations to the Under Secretary for Oceans and Atmosphere to address our concerns.



In its response to our draft report, NOAA concurred with our findings and recommendations. The response also indicates that, in some cases, OAR has taken preliminary actions to address our concerns. We intend to monitor OAR's progress in implementing these recommendations and complying with any forthcoming departmental guidance on interagency and other special agreements.

INTRODUCTION

Pursuant to the authority of the Inspector General Act of 1978, as amended, the Office of Inspector General conducted an inspection of the National Oceanic and Atmospheric Administration's Office of Oceanic and Atmospheric Research's (OAR) management of interagency and other special agreements. Fieldwork was performed during the period from August 19, 1997, through October 31, 1997. The inspection was conducted as part of a larger, Department-wide review of these agreements. In addition, this review was conducted as a follow-up to our June 1996 audit report, entitled *OAR's Cost Recovery for Sponsored Research Needs Improvement* (STL-7658).

Prior to the issuance of this report, we discussed some of our preliminary findings with the OAR's Assistant Administrator and Deputy Assistant Administrator. This inspection was conducted in accordance with the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

Inspections are special reviews that the OIG undertakes to provide agency managers with timely information about operations, including current and foreseeable problems. Inspections are also done to detect and prevent fraud, waste, and abuse, and to encourage effective, efficient, and economical operations. By highlighting problems, the OIG intends to help managers move quickly to address those identified during the inspection and avoid their recurrence in the future. Inspections may also highlight effective programs or operations, particularly if they may be useful or adaptable for agency managers or program operations elsewhere.

PURPOSE AND SCOPE

Interagency and other special agreements are mechanisms for federal agencies to define terms for performing work for others (reimbursable agreements), acquiring work from others (obligation agreements), or coordinating complementary programs without the transfer of funds (memoranda of understanding or agreement, also referred to as unfunded agreements). These agreements can be between Commerce entities; or between one Commerce unit and another federal agency, a state or local government agency, a university or other educational institution, a not-for-profit organization, or a private party. They involve a significant amount of federal resources, but are not subject to the same controls as traditional procurement contracts, grants, or cooperative agreements.

We defined interagency and other special agreements as those agreements that are *not* grants, cooperative agreements, or traditional procurement contracts.¹ For simplicity, we use the term “agreement” to refer to the various types of interagency or other special agreements within our scope. Agreements can include memoranda of agreement, memoranda of understanding, purchase orders that document both parties’ acceptance, or any other document that details the terms of an agreement and the parties’ acceptance. Agreements can transfer funds from one party to the other, bind one or both parties to commit funds or resources to a project, or not involve any resources.

In 1994, we examined agreements for reimbursable work performed by the National Telecommunications and Information Administration, finding several problems, including more staff than necessary for its mission because of its over-reliance on reimbursable funding.² That same year we issued letter reports to the International Trade Administration and NOAA on their respective agreements. Our report to ITA cited the fact that it had not provided a complete and timely accounting of all agreement costs and expenditures to other parties to its agreements.³ In our report to the NOAA Comptroller, we expressed our concerns about NOAA’s ability to produce a concise, credible inventory of interagency agreements.⁴ Then, in 1995 and 1996, respectively, the OIG reported that the National Marine Fisheries Service and OAR consistently undercharged for services they provided under agreements.⁵ Due in part to the concerns raised in these reports, we began our current Department-wide review of interagency and other special agreements.

¹The Federal Grant and Cooperative Agreement Act of 1978 defines these types of agreements: **Procurement contracts**—legal instruments “reflecting a relationship between the United States Government and a State, a local government, or other [non-federal] recipient when . . . the principal purpose . . . is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government” (31 U.S.C. § 6303); **Grants**—legal instruments used when “(1) the principal purpose of the relationship is to transfer a thing of value to a State or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States . . . and (2) substantial involvement is not expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement” (31 U.S.C. § 6304); **Cooperative agreements**—differ from grants only in that they are to be used when substantial involvement by the executive agency is expected (31 U.S.C. § 6305).

²*NTIA Interagency Agreements, Institute of Telecommunication Sciences*, (IRM-5723, January 1994).

³*Interagency Agreements Conducted by the International Trade Administration*, (IRM-6290, September 1994).

⁴*Preliminary Findings Regarding Inspection Work on NOAA Interagency Agreements*, (IRM-6291, September 1994).

⁵*NMFS Cost Recovery for Sponsored Research Needs Improvement*, (STL-6528, May 1995); *OAR’s Cost Recovery for Sponsored Research Needs Improvement*, (STL-7658, June 1996).

This is one report in a series to be issued as part of our Department-wide review of agreements. The purpose of the inspection was to evaluate policies, procedures, and practices being followed at OAR headquarters and field locations in carrying out the responsibilities related to these agreements. This included determining whether OAR and its operating units have resolved recommendations made in a June 1996 OIG audit report and whether OAR has improved its preparation of agreements since that report. We expanded the scope of the inspection beyond the determination of OAR's action on audit report recommendations to include OAR's policies and procedures for obtaining legal review of draft agreements and its methods to inventory and track agreements. We also evaluated substantive issues, such as the relationship of the agreements to OAR's mission and whether the agreements are possibly being used to circumvent procurement or financial assistance processes.

In conducting our review, we (1) determined the number, dollar value, and type of OAR agreements; (2) analyzed a representative sample of new agreements finalized from June 1996 through September 1997 (99 of 506 total), which included agreements from each major OAR program with a variety of other parties; (3) evaluated the review, control, and record-keeping rules and processes used by the Department, NOAA, and OAR; (4) interviewed appropriate Department, NOAA, and OAR officials in headquarters and the field; and (5) examined pertinent files and records relating to OAR's operations and management.

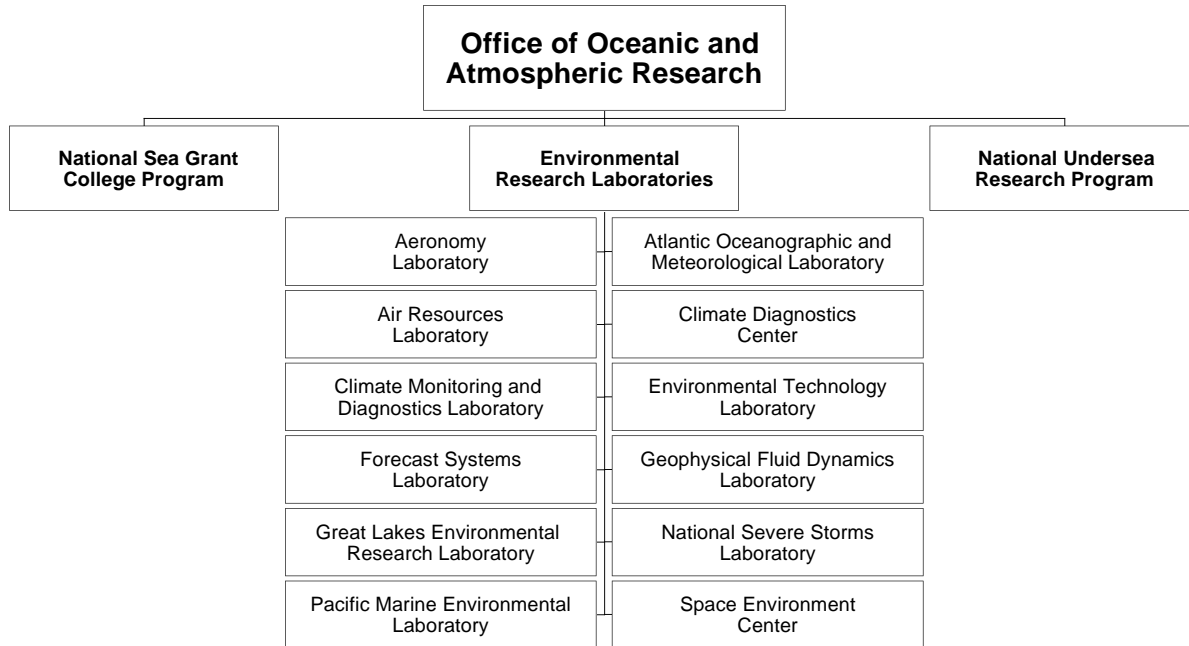
BACKGROUND

NOAA's mission is to describe and predict changes in the earth's environment, and conserve and manage wisely the nation's coastal and marine resources to ensure sustainable economic opportunities. OAR is the primary research and development unit of NOAA. It conducts and directs research programs in coastal, marine, atmospheric, and space sciences through its own laboratories and offices, as well as through networks of university-based programs across the country. OAR's work consists of research, modeling, environmental observations, and outreach efforts that relate primarily to weather, climate, and environmental resources. As shown on the organizational chart on the following page, OAR's three major units include the Environmental Research Laboratories (ERL), the National Sea Grant Program (Sea Grant), and the National Undersea Research Program (NURP). The following table summarizes the total number of agreements and how those resources relate to OAR's total budget.

Table 1: Summary of OAR Resources and Agreements (Fiscal Year 1997)

	Base Funding	Reimbursable Agreements*	Obligation Agreements	Number of Agreements*	Staffing
ERL	\$72,847,300	\$72,244,900	\$2,029,108	405	796
Sea Grant	\$54,300,000	\$10,329,061	\$476,000	95	17
NURP	\$12,000,000	\$0	\$1,043,000	4	6
OAR Headquarters	\$3,969,000	\$0	\$0	2	44
Total	\$143,116,300	\$82,573,961	\$3,548,108	506	863

* Includes transfers from other NOAA programs.



Environmental Research Laboratories

ERL’s mission is to conduct an integrated program of fundamental research, technology development, and services to improve understanding of the earth and its oceans and inland waters, the lower and upper atmosphere, and the space environment. There are 12 ERL laboratories located throughout the country, each specializing in a different aspect of environmental science, as shown in the above organizational chart.

ERL’s mission is derived in part from a 1963 Bureau of the Budget (now the Office of Management and Budget) circular, which designated Commerce as the sole civilian provider of meteorological services and research. Commerce delegated this mandate to NOAA which then assigned these responsibilities to ERL. The Bureau of the Budget circular has since been rescinded, but according to a 1991 *Federal Register* notice, the policy guidance given in that circular is to be carried out through other mechanisms, with Commerce having the central role with respect to meteorological services and applied research and development to improve such services. Commerce is also authorized under 15 U.S.C. § 313 to perform various activities in support of weather forecasting. These mandates support, in part, the significant amount of reimbursable work performed by ERL for other agencies.

Of the three operational units within OAR, ERL has the most agreements, comprising 95.8 percent of the total number of OAR agreements, and 90.0 percent of the funding associated with those agreements in fiscal year 1997. Performing work for or with others is a significant portion of ERL's total research program, as evidenced by the fact that funds received through agreements accounted for 49.8 percent of ERL's total budgetary resources. Considering the relative size and importance of ERL's reimbursable program, this report focuses predominantly on ERL.

National Sea Grant College Program

The Sea Grant office oversees grants to a network of 29 sea grant colleges, which conduct education, training, and research in all fields of marine study. Sea Grant also has a specific mandate to perform certain services for other federal agencies. The National Sea Grant College Program Act (33 U.S.C. § 1121 *et seq.*) "encourage[s] other Federal departments, agencies, and instrumentalities to use and take advantage of the expertise and capabilities which are available through the national sea grant college program, on a cooperative or other basis." Sea Grant is also authorized to "accept funds from other Federal departments, agencies (including agencies within [NOAA]), and instrumentalities to pay for and add to grants made, and contracts entered into, by [Sea Grant]."

In fiscal year 1997, Sea Grant entered into 91 agreements to receive and then grant out approximately \$10.3 million under this authority. Most of that funding was received from other NOAA programs, whereas other federal agencies transferred funds to Sea Grant through just 10 separate interagency agreements. Sea Grant also has four additional agreements that coordinate the program's efforts with other federal agencies or other NOAA programs. These agreements are with the U.S. Department of Agriculture, the Fish and Wildlife Service, the National Weather Service, and the National Ocean Service's Coastal Services Center. We did not evaluate these agreements beyond verifying that they are consistent with Sea Grant's mission. Our office is currently conducting a separate review of Sea Grant, including the administration of its grants.

National Undersea Research Program

NURP issues umbrella grants to a network of six regional centers for undersea research and access to underwater vehicles and facilities. NURP's institutional existence has no statutory authority. The present program evolved from the Manned Undersea Science and Technology Program, created in 1971, and a regional National Underwater Laboratory System, created in 1977. In 1979, the Ocean Science Board of the National Research Council reviewed NOAA's underwater research activities and recommended consolidation of these activities, finally achieved by the creation of NURP in 1980.

NURP only maintains four agreements. Three of these agreements have an approximate annual value of \$1 million, while the fourth agreement does not involve any transfer of funds. Most of

NURP's agreements involve lending out undersea research equipment that NURP grantees use in their work. While NURP's agreements were reviewed for this report, NURP received the most limited review, relative to the other OAR units, as a result of its possession of the smallest percentage of OAR agreements.

OBSERVATIONS AND CONCLUSIONS

I. OAR Is Making Progress Toward Achieving Full Cost Recovery

In June 1996, the OIG Office of Audits issued a report entitled *OAR's Cost Recovery for Sponsored Research Needs Improvement*. The report cited OAR's lack of a time management system for recording labor costs and charging inadequately supported overhead rates as the primary causes for OAR's inability to achieve full research cost recovery. During our present review, we followed up on OAR's efforts to address and resolve the issues identified in the 1996 audit report.

Considering the significant amount of reimbursable work performed by OAR, full cost recovery is a serious concern. OAR is required by federal law, Office of Management and Budget (OMB) Circular A-25, dealing with user fees, the *Department of Commerce Accounting Principles and Standards Handbook* and the *NOAA Budget Handbook* to achieve full cost recovery for work performed under agreements. In particular, the Economy Act (31 U.S.C. §§ 1535-1536) requires federal agencies to recover actual costs for reimbursable work performed for other federal agencies. Similarly, Commerce's Joint Project Authority (15 U.S.C. §§ 1525-1526) requires agencies performing joint projects to apportion full costs on an equitable basis.

An agency's failure to recover actual costs or to equitably apportion full costs in a joint project could result in a circumvention of the appropriation process because it could cause the agency to undercharge or overcharge the sponsoring organization. A performing agency's appropriated funds may be improperly (1) depleted to the extent that the labor and other costs that should be charged to sponsored project agreements are charged to appropriated funds, or (2) augmented to the extent that an agency receives amounts in excess of its actual costs. Furthermore, the ordering agency's appropriation can be improperly augmented if does not reimburse the performing agency for its full costs.

There are two practical tools that an agency can use to track the costs for which it should be reimbursed. The first is a time management system (use of time sheets for individual employee labor recording), which enables agencies to accumulate and then charge actual labor costs rather than estimated costs. The second is maintaining detailed budget breakdowns of material costs, equipment, and associated costs. Accurate itemization of costs also helps in calculating proper overhead rates. The 1996 audit report found that OAR (1) lacked reliable methods for both tracking actual labor costs and accurately itemizing applicable costs and (2) applied various unapproved and unsupported overhead rates.

We found that OAR is in the process of achieving full cost recovery by implementing the recommendations made in the 1996 audit report. As directed by NOAA, OAR and the other NOAA line offices implemented a time management system in June 1996. Under the new

system, individual employees are responsible for accurately completing a labor distribution worksheet for each pay period. We found that the new system has substantially improved OAR's ability to achieve full cost recovery.

Furthermore, in December 1997, OAR submitted an action plan to address all other issues presented in the 1996 audit. First, the action plan stated that OAR corrected the improper use of overhead rates by five ERL laboratories cited in the audit report. Those laboratories now only apply approved overhead rates. Second, OAR is currently in the process of developing systematic processes to fully implement the audit recommendations. In August 1997, OAR contracted with a private accounting firm to review the current cost accounting methodology used by ERL's Forecast Systems Laboratory. The accounting firm concluded that the laboratory's current system is auditable, but not in accordance with generally accepted accounting principles. OAR formed a team to address the accounting firm's findings and to develop a proposal to revise the cost accounting methodology. In December 1997, NOAA's Office of Finance and Administration approved OAR's proposal. The new methodology is expected to be fully implemented by September 1998, when NOAA's financial management system is adjusted to reflect the new accounting methodology.

As a result of the 1996 audit report, ongoing OIG follow-up, and OAR's internal efforts, we believe that OAR is making progress toward achieving full cost recovery.

II. Despite Some Procedural Changes, Improvements Are Still Needed to Comply with Federal Requirements

The 1996 audit report found significant deficiencies in OAR's preparation of agreements in accordance with legal statutes and departmental policies. Concerns included the lack of (1) citations to legal authority, (2) appropriate level of approval for agreements, (3) total project costs and/or budget summaries, and (4) written documentation addressing applicable legal criteria. There has been mixed improvement in agreements prepared since the 1996 audit. In addition to following up on those four audit issues, we reviewed agreements to determine whether a termination date or review period were adequately defined.

A. Some agreements fail to cite applicable legal authorities

The *NOAA Budget Handbook* and *NOAA Administrative Order 201-105* provide model agreements that require citation to applicable legal authorities that are used as the basis for agreements. Legal authorities typically cited in agreements include: Economy Act of 1932 (31 U.S.C. §§ 1535-1536), Joint Project Authority (15 U.S.C. §§ 1525-1526), Intergovernmental Cooperation Act (31 U.S.C. § 6505), Federal Technology Transfer Act of 1986 (15 U.S.C. §§ 3710a-3710d), and general user fee authority under 31 U.S.C. § 9701 and OMB Circular A-25. Program authority may also exist as a result of congressional action. For example, specific authority for another federal agency to transfer funds to NOAA may be contained in program statutes (*e.g.*, the Clean Water Act or the National Sea Grant College Program Act).

We found that OAR does not consistently cite the applicable legal authority in their agreements and has not demonstrated an acceptable level of improvement in authority citation since the 1996 audit report. That report indicated that 45.4 percent of agreements sampled did not cite a legal authority. Our sample indicated that 39.4 percent (39 of 99) did not cite a legal authority, a minimal improvement.

Citation to proper legal authority is important because the type of authority chosen for a particular agreement affects the treatment of funds transferred under the agreement, including the timing or disposition of receipts. For example, the Economy Act requires that all payments for work or services performed be deposited to the appropriation or fund against which the charges have been made. Under the Joint Project Authority, all payments are deposited into a separate account that may be used to directly pay the costs of work or services performed, to repay advances, or to refund excess sums when necessary. All receipts for furnishing specialized or technical services authorized under the Intergovernmental Cooperation Act may be deposited in the appropriation or funds from which the cost of providing such services has been paid or is to be charged. In contrast, fees collected as user fees must be returned to the U.S. Treasury in full

unless existing statutes specifically provide otherwise. Without an accurate citation, OAR cannot be certain that they are properly depositing and handling funds associated with agreements.

The type of legal authority used also affects the period of availability for funds transferred under an agreement. For Economy Act agreements, the period of availability of funds transferred may not exceed the period of availability of the source appropriation. Accordingly, one-year funds transferred by the requesting agency must be returned at the end of that fiscal year and deobligated by that agency, to the extent that the performing agency has not performed or incurred valid obligations under the agreement. When the agreement is based on some statutory authority other than the Economy Act, the funds will remain payable in full from the appropriation initially charged, regardless of when performance occurs. The funds are treated the same as contractual obligations, subject, of course, to the “*bona fide* needs” rule⁶ and to any restrictions in the legislation authorizing the agreement. Therefore, it is necessary to determine the correct statutory authority for any agreement, in order to apply the proper obligational principles.

In several instances, OAR produced a letter that cited a legal authority for a corresponding agreement. However, we do not believe that this practice is sufficient to comply with departmental and agency policies. The letter can be easily separated from the agreement, making it difficult to determine whether a legal citation was associated with a given agreement. Also, a separate letter with additional terms may not constitute a valid agreement between the parties. In summary, the current practice of not citing a legal authority directly in all OAR agreements is inappropriate. OAR needs to provide adequate guidance and oversight to its programs to ensure that all agreements include a cited legal authority.

B. Many agreements lack the appropriate level of approval

The 1996 audit report found that only 54.6 percent (83 of 152) of the sampled agreements had an appropriate level of approval. The audit report also stated that OAR personnel expressed confusion over the various informal delegations of authority and admitted that they did not know the appropriate approval procedures. During our inspection, we found that 87.9 percent (87 of 99) of agreements reviewed were approved and signed by an appropriate official. The improvement can be attributed in part to a new approval policy. In March 1997, NOAA’s Chief Financial Officer and Chief Administrative Officer officially delegated signature authority for reimbursable agreements up to \$500,000 to the Director of ERL. The memorandum recognized

⁶The *bona fide* needs rule states that a fiscal year appropriation may be obligated only to meet a legitimate, or *bona fide*, need arising in, or in some cases arising prior to but continuing to exist in, the fiscal year for which the appropriation is made.

that this delegation formalized OAR's established practices and emphasized that all future delegations must be approved in writing.

However, the March 1997 delegation only applies to ERL. Sea Grant still does not have a written policy on the appropriate level of approval. In practice, Sea Grant's Executive Director, Director, or other program official, depending on who is available, signs agreements. The *NOAA Budget Handbook* states that reimbursable tasks amounting to less than \$100,000 may be delegated for approval at the financial management center level (e.g., Sea Grant or NURP Directors). Reimbursable tasks amounting to less than \$1 million and less than 10 work-years require approval at the line office level (e.g., the Assistant Administrator for OAR). Reimbursable tasks amounting to \$1 million or 10 work-years or more require approval by NOAA's Chief Financial Officer before final acceptance by the line office. Sea Grant is not in compliance with these criteria.

The *NOAA Budget Handbook* criteria do not apply to NURP because it does not have any reimbursable agreements. NURP also does not have a written policy for approvals of its obligation agreements or memoranda of understanding or agreement. From our review, we found that either the Deputy Under Secretary of NOAA, the Deputy Assistant Administrator of OAR, or the NURP Director signs NURP agreements. These levels of approval seem appropriate, however, based on *NOAA Administrative Order 201-105* on memoranda of understanding or agreement, that states that agreements should be signed at the lowest level to which the significant responsibilities have been delegated.

OAR should ensure that each agreement receives the appropriate level of approval. The criteria stated above should be reiterated to all OAR program officials and also provided to new managers and administrative officials who will have responsibility for agreements. In addition, OAR should consider seeking additional signature authority delegations for Sea Grant and NURP.

C. *Agreements often have incomplete budget information*

Only 46.5 percent (46 of 99) of agreements sampled in our review included total project costs combined with acceptable budget summaries. Agreements should include total project costs to ensure full cost recovery as required by OMB Circular A-25, the *Department of Commerce Accounting Principles and Standards Handbook*, and the *NOAA Budget Handbook*. In addition, estimating total project costs, including the performing agency's contributions, and budget summaries may be necessary to comply with applicable legal authorities. Without an estimate of a project's total costs, the agency performing reimbursable work may not be able to adequately predict whether full costs will be recovered under the Economy Act. If the project is performed under the Joint Project Authority, the agreement should indicate the contributions of each

organization and demonstrate that the way in which the costs are apportioned is equitable in relation to the benefits received.

In practice, OAR programs often rely on research proposals to define and justify reimbursable projects. We found that both ERL and Sea Grant have procedures for constructing proposals. In addition to a statement of work, the procedures require proposals to include total project costs and budget summaries. However, ERL only recently began requiring its laboratories to forward proposals with the formal agreement for review by the officials responsible for signing the agreement. In addition, the proposals are also not always referenced in the agreements. Incorporating the proposals by reference and attaching the proposal to the agreement or including proposal cost information in the actual agreement would greatly improve the quality of OAR agreements.

When agreements do not identify total project costs, managers and reviewers cannot accurately determine whether full costs are being recovered or if costs have been apportioned equitably for joint projects. Also, if total project costs are not identified, an agreement may not receive approval at an appropriate level within the organization. Accurate, detailed budget summaries also assist managers and reviewers in assessing an estimate of the full cost of an agreement. Therefore, OAR officials reviewing agreements should ensure that total project costs and budget summaries, including OAR's contributing share, are defined in the agreement. If that information is provided in the proposal exclusively, OAR should require that the proposal be expressly incorporated by reference in the agreement.

D. OAR does not adequately justify agreements

In order to construct a legal agreement, requirements defined in each applicable statutory authority must be met. Additionally, OMB Circular A-25 requires bureaus to ensure the relevant criteria are met before citing specific legal authorities that are the basis for their agreements. These criteria range from ensuring that necessary funds are available, to determining that the service a government entity will provide does not compete with the private sector.

On the following page, Table 2 lists some relevant legal citations and includes factors that must be considered when creating agreements.

Table 2: Summary of Relevant Legal Authorities

Legal Authority	Applicable Criteria
Economy Act of 1932 (31 U.S.C. § 1535)	a. Funds are available.
	b. The head of the ordering agency decides the order is in the best interest of the government.
	c. The agency filling the order is able to provide the goods or services.
	d. The head of the ordering agency decides whether or not the ordered goods can be provided as conveniently or cheaply by a commercial enterprise.
Joint Project Authority (15 U.S.C. § 1525)	a. The total costs (sum of costs for all participants in the joint project) for such projects must be apportioned equitably.
	b. Joint projects may be performed only if (1) the project cannot be done at all or as effectively without the participation of all parties to the project or (2) the project is essential to the furtherance of a departmental program.
Intergovernmental Cooperation Act (31 U.S.C. § 6505)	a. Agencies may provide specialized or technical services for state or local governments that the agency is especially competent and authorized by law to provide.
	b. The services must be consistent with and further the government's policy of relying on the private enterprise system to provide services reasonably and quickly available through ordinary business channels.
	c. Services may be provided only when there is a written request for those services made by the state or local government. The requestor must also pay all identifiable costs incurred by the agency in rendering the service.
General user fee authority (OMB Circular A-25)	Agencies may impose a fee for an activity that conveys special benefits to its recipient(s) beyond those accruing to the general public.
Federal Technology Transfer Act (15 U.S.C. § 3710a)	a. Agency program missions shall be advanced.
	b. Special consideration shall be given to small businesses and to businesses that agree to manufacture any products in the United States.

Written justifications addressing these factors, although logical, are not always required. The *Federal Acquisition Regulation* (FAR) prescribes the policies and procedures applicable to interagency acquisitions only under the Economy Act. When a government agency purchases a good or service from another government agency, the requesting agency must prepare a determination and finding (D&F).⁷ D&Fs document that “(1) use of an interagency acquisition is in the best interest of the Government; and (2) the supplies and services cannot be obtained as conveniently or economically by contracting directly with a private source.”⁸ Additional matters must be addressed in the D&F if the Economy Act agreement requires contracting by the servicing agency.⁹ According to the FAR, a D&F “shall be approved by a contracting officer of the requesting agency with authority to contract for the supplies or services to be ordered, or by another official designated by the agency head.”¹⁰ Specifically, a contracting officer ensures that authorities and funding are adequate.

In addition, to the extent that the Department is engaging in a commercial activity, an economic analysis in accordance with OMB Circular A-76 must be completed.¹¹ Circular A-76 prohibits the government from starting or continuing activities to provide a commercial product or service if the product or service can be procured more economically from a commercial source. To this end, an agency that wishes to procure goods or services from another federal agency must prepare an analysis of its requirements to determine that use of another agency’s resources is necessary because (1) there is no commercially available source, (2) the required goods or services are a matter of national security or government medical patient care, or (3) procuring from another agency is the lowest cost solution.

The FAR requirement for requesting agencies to prepare a D&F for Economy Act transfers appears to be the only regulation that explicitly requires a written justification addressing relevant legal criteria.¹² Yet, for all types of agreements regardless of the legal authority cited, written justifications, which prove that the legal criteria have been met, represent a good management practice. Several of the criteria listed in Table 2 are complex, such as the Joint

⁷Intraagency transactions are addressed in agency regulations (FAR § 17.500(a)).

⁸FAR § 17.503(a).

⁹FAR § 17.503(b).

¹⁰FAR § 17.503(c).

¹¹FAR § 17.502(c), citing FAR § 7.3.

¹²In addition to a D&F, the FAR requires that Economy Act agreements include specific provisions, such as a description of the supplies or services required, delivery requirements, a funds citation, payment terms, and acquisition authority, as may be appropriate (FAR § 17.504(b)).

Project Authority requirement that the project cannot be done at all or as effectively without the participation of all parties. Without the aid of a written justification, it may be difficult to show that the criteria for some agreements have been met. In addition, managers or other officials who review agreements that they did not negotiate need sufficient written documentation to determine that all relevant criteria have been met.

We found that only limited supporting documentation was included with the agreements to indicate that OAR personnel considered the factors required to support the agreements' legal citations. In fact, no OAR program regularly prepares written justifications for reimbursable agreements. For those agreements where OAR pays for services from another federal agencies under the Economy Act, OAR does not consistently prepare D&Fs in compliance with the FAR. Sea Grant, for example, simply agrees to fund another agency's project, prepares a procurement request, and submits that paperwork to NOAA's Office of Finance and Administration for processing. No D&Fs are prepared and a contracting officer does not review and approve agreements before they are executed. Without written justifications that the relevant criteria have been met, it is not possible to verify whether proper consideration of those criteria has taken place.

In contrast, we found one agreement that appeared to be appropriately justified and reviewed. In this case, the Pacific Marine Environmental Laboratory transferred funds to the Federal Emergency Management Agency and the U.S. Geological Survey for a Tsunami Mitigation project. In accordance with its standard practice, the Western Administrative Support Center's Purchasing Office reviewed the agreement for legal authority and proper signatures from all parties, and prepared a D&F addressing the Economy Act criteria. The agreement, therefore, fully complied with the FAR.

While the statutory authorities do not explicitly require written justifications, informal or non-systematic consideration of the relevant criteria is not sufficient, given the complexity of some of these issues. With the assistance of NOAA Counsel, OAR should review existing laws, including those listed in Table 2, and determine what requirements would be better supported by increased written justifications. Then, OAR should provide adequate guidance and oversight to its programs to ensure that agreements include appropriate written documentation to prove that the relevant criteria have been met.

E. Termination dates or review periods are not always defined

We found that 7.1 percent (7 of 99) of the agreements we reviewed did not define a termination date or review period. The *NOAA Budget Handbook* requires that reimbursable agreements include terms stating (1) when and under what circumstances the agreement is to be terminated and (2) that the agreement must be reviewed periodically, but not less than annually. *NOAA Administrative Order 201-105* requires Assistant Administrators and line office directors to (1) ensure that each memorandum of understanding or agreement includes mandatory start and termination dates and (2) periodically review each agreement to determine whether the agreement should be renewed, amended, updated, or canceled and whether the provisions and objectives are being met. Defining these relevant dates or time periods is important to ensure that agreements are properly administered and kept up-to-date.

When the stated performance period is undefined or indefinite, it is difficult to determine whether the agreement is still valid and whether reassessment of the agreement ever occurred. In addition, even if a need still exists, as time passes critical features of the project, such as the level of funding or other resources, may need modification. An ill-defined performance period may ultimately result in the performance of work that is no longer mission-related, the waste of funds and personnel, or the inequitable apportioning of project costs.

We found one example where the National Aeronautics and Space Administration (NASA) transferred \$6.3 million to ERL to perform one task under a 1973 memorandum of understanding between NASA and NOAA, which governs joint satellite programs worth approximately \$172 million a year. While the 1973 agreement states that it remains in effect indefinitely and may be terminated or modified at any time, it has not been formally updated since it was first drafted 25 years ago. We understand that NASA and NOAA are reviewing the agreement and now agree that it needs updating. Given the significant resources committed to the joint satellite programs and recent OIG criticisms of how the programs are funded,¹³ a close review of the 1973 agreement is warranted.

With regard to Sea Grant, we found three agreements that were signed in 1977, 1984, and 1987, respectively. The agreements include provisions which require that they (1) be reviewed periodically, but not less than annually, and (2) remain in effect until terminated by mutual agreement or upon adequate notice of either party. However, we found that Sea Grant does not regularly review these agreements. Although the agreements still relate to valid programmatic

¹³In two 1997 inspection reports, the OIG found that NOAA transferred large amounts of excess funds to NASA under the 1973 agreement to avoid having to identify unspent funds as carryover. This action enabled it to escape the scrutiny such funds receive from the Department, OMB, and the Congress. (*Excess Funding in the Polar Orbiting Satellite Program*, OSE-8797-7-0001, March 1997; and *Excess Satellite Funding Indicates Need For Better Financial Controls*, OSE-8797-7-0002, September 1997)

needs, they may require amendment. In particular, the Fish and Wildlife Service initiated a review of and recommended changes to its 1977 agreement with Sea Grant, but no action has been taken by Sea Grant in response. The 1984 U.S. Department of Agriculture agreement coordinates its Extension Service activities with the local Sea Grant programs and the 1987 National Weather Service agreement authorizes Sea Grant programs to organize weather reports from mariners. Even though there may still be some value to these programs, they should be periodically reviewed to determine if changes in circumstances require the agreements to be updated.

All agreements should have a defined performance period with a stated effective date and when possible, a specific termination date. For agreements that continue over an extended term, where it is not feasible to define a termination date, the agreement should have a provision for a periodic review and amendment by mutual consent of the parties.

F. OAR needs to further improve its policies and procedures

NOAA stated in its response to the 1996 audit report that the NOAA Office of the Comptroller would update the *NOAA Budget Handbook* to include a listing of required legal authorities and procedures for preparing agreements. As of the date of this report, no applicable changes have been made to the *NOAA Budget Handbook*.¹⁴ However, we found that ERL is in the process of updating its internal procedures.

ERL recently updated its policies and procedures for agreements

ERL's administrative staff recently prepared a checklist to follow while preparing agreements. The checklist includes basic information about the agreement (such as type of sponsor and period of performance), substantive justifications, applicable legal authority, strategic plan elements, budget information, billing basis and cycle, and waiver justification for not seeking advance funding from non-federal sources. The official preparing an agreement must mark certain boxes to identify which option in each section applies. Once completed, the checklist will remain on file with the agreement and serve as an assurance that each of the required elements have been addressed. This change represents a significant improvement in ERL's agreements process. If

¹⁴During a review of NOAA's fiscal year 1997 financial statements, auditors found that, among other things, (1) NOAA programs were conducting work without a current agreement, (2) reimbursable projects were not being billed according to the terms of the agreements, and (3) NOAA was not consistently collecting funds in advance for non-federal reimbursable projects. In December 1997, NOAA's Chief Financial Officer and Chief Administrative Officer issued a memorandum making changes in reimbursable procedures to correct these deficiencies. However, these proposed changes did not address other issues identified in other OIG reviews.

consistently applied and regularly updated, the checklist should improve ERL's compliance with federal requirements for agreements.

ERL's agreements checklist was reviewed by NOAA Counsel, and then implemented in February 1998. The checklist was distributed to all the laboratories and posted on ERL's intranet. Although we agree that the checklist is a good tool for researchers, administrative officials, and supervisors who are involved in preparing or reviewing agreements, the checklist should be supplemented by a thorough policy on agreements. Existing guidance dealing with other aspects of preparing agreements is either out-of-date or incomplete. For example, ERL's April 1993 guidance on obtaining other agency and organization funding support is out-of-date and partially inaccurate.

In response to the lack of thorough guidance, at least one laboratory, the Forecast Systems Laboratory, has developed its own comprehensive policy on agreements, including discussions of legal issues, general strategy, types of agreements, and content of agreements. In addition to following the new checklist, this type of policy is a necessary resource for officials preparing agreements, by providing such information as when an agreement is necessary, what level of approval is required, and suggested language for agreements. The policy, therefore, should mirror the checklist by providing detailed explanations of each section and any other necessary information. NOAA Counsel should assist ERL in updating its policy to ensure that it is complete and accurate.

OAR should consider adopting similar policies and procedures office-wide. Each unit within OAR, including the Assistant Administrator's office, prepares or reviews agreements. For those units that prepare relatively few agreements, an OAR policy could be followed without further refinement. ERL, on the other hand, should probably continue to have procedures specific to its operations, considering that it has significantly more agreements and has a more involved approval process. OAR should also be aware that the Department may soon develop Department-wide guidance on agreements. We have discussed with Department officials the possibility of developing a new Department Administrative Order for agreements. OAR should make any of its internal procedures consistent with this forthcoming departmental guidance.

Agreement negotiation process should be improved

As part of the creation of any new policies and procedures for agreements, OAR should include a more formal method of ensuring that agreements prepared by other parties are complete before they are signed by the appropriate NOAA official. As discussed above, we found similar deficiencies in fiscal year 1997 agreements as the audit report found in agreements from fiscal years 1993 and 1994. These persistent deficiencies are due in part to the fact that other parties prepared the agreements and OAR failed to negotiate with the other party to make necessary changes before agreements were signed.

OAR officials are making some effort to identify missing terms and notify the other parties of what those terms should be. Currently, OAR prepares a cover letter that is sent to the other party with the signed agreement. The letter, signed by the OAR official who signed the agreement, acknowledges receipt and acceptance of a stated agreement and includes several standard items, such as the amount of the agreement, legal citation, termination date, and billing terms, whether or not those terms are stated in the agreement. However, this practice does not represent a formal agreement between the parties, because the additional terms in the letter are not agreed to by the other party. For example, one NASA agreement specifically stated that “no changes are to be made to this purchase order without the proper authorization from [Goddard Space Flight Center] procurement.” But, the ERL cover letter included some additional terms.

We suggest that OAR work with the Office of General Counsel (OGC), NOAA Counsel, and NOAA management to establish a formal procedure for ensuring that agreements prepared by other parties are complete. NOAA should develop standard language that is sent to the sponsoring party when negotiations on a project first begin. The standard language would inform the other party of basic elements that must be included in any formal agreement, including legal citation, termination date or performance period, and total project costs. This notice could be incorporated into any initial correspondence or be presented as a brief standard form. NOAA could also post this notice on NOAA’s web site for other parties to access electronically. Forms of this nature, such as those used by the Census Bureau or the Environmental Protection Agency, would be useful resources for developing a standard form.

As a second step, if a final agreement is still incomplete, NOAA should prepare a formal modification or amendment that specifies missing terms and is signed by both parties. NOAA could use the same standard form used during negotiations. To ensure full compliance, NOAA should not be permitted to begin work on a project until the agreement and any modifications or amendments needed to include missing terms are signed. Given persistent deficiencies found in OAR and other NOAA agreements, a procedure that formally notifies other agencies and/or parties of necessary terms and subsequently modifies or amends incomplete agreements is essential to ensure future compliance and to protect NOAA from any risks associated with these deficiencies.

Wide distribution of any new or updated policies and procedures is essential. OAR should provide training to all current and future administrative staff on how to properly prepare and process agreements. We found that no specific training on agreements is currently being provided to OAR staff. OAR should also make all information relevant to preparing and processing agreements easily accessible by posting documents on NOAA’s intranet. Finally, we understand that OAR regularly holds annual administrative and management conferences. Agreements should be a regular topic during these conferences, including the discussion of any subsequent changes in the law and agency procedures.



In its response to our draft report, NOAA concurred with our recommendations to (1) draft policies and procedures for preparing and processing OAR agreements, (2) provide training to all appropriate staff, (3) make all relevant information available on NOAA's intranet, and (4) regularly address the issue of agreements in future administrative and management conferences. We agree with NOAA's comment that these actions are dependent on the Department issuing regulations on agreements. However, NOAA and OAR should anticipate the forthcoming guidance by regularly communicating with the Office of the Secretary and taking any appropriate preliminary actions.

III. OAR Lacks a Consistent Policy on Legal Review of Agreements

We found that a relatively small number of OAR agreements receive proper legal review. According to files kept by NOAA's Executive Secretariat, only 10 of 506 OAR agreements were reviewed by OGC in fiscal year 1997.¹⁵ If an agreement has not been reviewed by legal counsel, it may (1) not comply with legislative and regulatory requirements, (2) not cite appropriate legislative authority, or (3) include terms unacceptable to or unnecessary for a federal agency. Currently, the Department does not have any orders or regulations that establish criteria for when OGC review is required before an agreement is signed. An April 1994 OGC memorandum states that Economy Act and joint project agreements "should" be sent to OGC for review, implying some level of discretion. OGC officials have stated, however, that they expect to review all funded and unfunded agreements unless a specific delegation has been granted to a bureau or line office.

Similarly, there is no written policy on which agreements require NOAA Counsel review. In practice, OAR programs first submit agreements to NOAA Counsel for review. NOAA Counsel then forwards those agreements to OGC. OGC has delegated authority to NOAA Counsel to review only one type of agreement—routine user fee agreements. This delegation, however, was not transmitted in a formal memorandum or directive. OGC simply informed NOAA Counsel of the delegation in their comments on one particular user fee agreement. Because NOAA Counsel only recently implemented a log to track their projects, we were not able to determine how many of these user fee agreements were reviewed by NOAA Counsel.

Because of the lack of written criteria for which agreements require legal review, actual practices vary among the offices and laboratories within OAR. Sea Grant does not seek any legal review of its pass-through agreements, while NURP regularly requests legal review. In ERL, the practices are even more widespread. Some ERL laboratories send only those agreements that they have questions about, another laboratory sends no agreements, and yet another laboratory sends all agreements to legal counsel. There is also a general misunderstanding about what type of agreements require legal review. While both legal offices agreed that purchase orders between NOAA and another federal agency should receive legal review, most OAR programs do not send this type of agreement to either NOAA Counsel or OGC.

Full compliance with OGC's requirement that all agreements receive legal review would likely have an impact on the ability of NOAA Counsel and OGC to complete their legal reviews within a reasonable amount of time. There is no stated policy on how long a legal review should take, and the actual processing time varies. For the 29 OAR agreements reviewed by OGC since April

¹⁵The total number of OAR agreements (506) includes all reimbursable agreements, obligation agreements, memoranda of agreement or understanding, and large or small interagency purchase orders.

1994, the median processing time by OGC was 30 days. However, several OAR agreements took a significant amount of time to review—as long as six months in some cases.

There may be valid reasons for a lengthy legal review, such as disagreements over terms of the agreement, uncertainty about the funding agency's appropriations, or overburdened and/or understaffed agency and departmental counsel offices. Nonetheless, we have found examples where delays have adversely affected OAR programs. One laboratory does not seek legal review because they believe that the delay would prohibit them from taking advantage of established cruise schedules of ships needed to conduct experiments or gather data.

In another example, the Atlantic Oceanographic and Meteorological Laboratory had to cancel an agreement with the State of New York because after six months of legal review, New York no longer required the work. In this case, legal review was delayed by staffing changes within NOAA Counsel and negotiations with New York over a disputed indemnification provision. The Forecast Systems Laboratory also had to cancel a reimbursable agreement with NASA after a six-month legal review. That agreement was delayed by discussions with the laboratory, NOAA Counsel's higher priorities, and other factors not related to the agreement itself. In both cases, any legal issues were ultimately resolved, but not in time for the project to proceed. Despite the advantages of legal review discussed above, OAR program officials expressed general skepticism about the value and timeliness of legal review and concern about the negative impact a lengthy delay would have on their programs.

Formal policies and procedures on legal review of agreements are clearly needed. NOAA Counsel should work with OGC and OAR program officials to establish reasonable criteria for which OAR agreements must be reviewed by OGC and which must be reviewed by NOAA Counsel. OGC has already established thresholds for legal review of National Marine Fisheries Service agreements.¹⁶ Some possible criteria for when NOAA Counsel and/or OGC must review OAR agreements could include those that reach a certain dollar threshold, include irregular terms and conditions, or involve a private or foreign party. The criteria should also clearly specify which types of agreements (*i.e.*, interagency purchase orders or joint projects) require NOAA Counsel and/or OGC review. In order to alleviate some of the concerns about delays caused by lengthy legal review, the policy should state how much lead time is required to obtain legal review. The programs must then provide agreements in sufficient time for legal review to be completed before a project is expected to start. NOAA should also consider including some kind

¹⁶The new guidelines state that OGC will review all of the National Marine Fisheries Service's agreements except (1) Economy Act agreements where less than \$100,000 is being transferred or (2) unfunded agreements with other federal agencies that are for the period of five years or less. However, if personal property is being transferred or loaned under an unfunded agreement, OGC review must be obtained. Furthermore, all joint project agreements, regardless of funding, must continue to be cleared by OGC.

of mechanism for legal counsel to inform the programs about the status of legal review so that the programs can anticipate when the legal review will be completed.

In addition to a clear policy on legal review, NOAA Counsel and OGC should develop some standard language or form agreements for use by the programs. We understand that some form agreements have been developed in the past. For example, in 1990, NOAA Counsel provided ERL a prototype agreement for orders from non-federal parties. The *NOAA Budget Handbook* and *NOAA Administrative Order 201-105* on memoranda of understanding or agreement also include some standard language, which may be outdated. Pre-approved language that is regularly reviewed and updated would facilitate the process by making agreements easier to draft and to review.



In its response to our draft report, NOAA concurred with our recommendation to (1) draft policies and procedures for obtaining legal review of OAR agreements and (2) develop standard language or form agreements for use by the programs. The response also indicates that NOAA has begun preliminary work to implement the recommendation on legal review.

IV. OAR Should Develop a Central Database to Inventory and Track Agreements

During our review, we found that OAR lacks a central database or tracking system for all of its agreements. OAR management does have a spreadsheet that lists only memoranda of understanding or agreement to comply with the *NOAA Administrative Order 201-105* requirement that each line office “maintain a repository of copies of their Line Office [memoranda of understanding or agreement] and notices of changes or terminations.”¹⁷ This list does not include all reimbursable, obligation, or joint project agreements. Each program within OAR then tracks its agreements in different ways.

Sea Grant’s budget officer maintains a spreadsheet listing pass-through projects, dollar amounts, recipients, and relevant dates. Agreements are also summarized in Sea Grant’s operational handbook that is distributed to all employees and the Sea Grant colleges. NURP, on the other hand, does not centrally track or file any of its agreements. ERL, having the most agreements, maintains a database of all its projects, including reimbursable agreements. The database lists projects by laboratory and by unique task codes. Project title, project leader, sponsor, project period, and funding information are also included. The ERL database does not include unfunded and obligation agreements, however. Because ERL headquarters does not maintain a central file or listing of all agreements, we experienced some difficulty in obtaining a comprehensive list of agreements and total dollar amounts.

Although OAR management keeps a spreadsheet that lists certain agreements, this method of tracking agreements is incomplete and not easily sorted by relevant information. A central database of agreements would be a useful management and administrative tool. The Government Performance and Results Act requires federal agencies to describe coordination and planning with other agencies on shared or similar functions and programs. In July 1997, the House Science Committee criticized Commerce’s strategic plan for failing to adequately discuss coordination of cross-cutting programs. The Department has since included more information about external program “linkages” in its strategic plan for 1997-2002. For each strategic theme (economic infrastructure, science/technology/information, and resource and asset management and stewardship), the Department describes several linkages with other federal and non-federal parties that support these strategic themes. OAR could use the database to provide input into NOAA’s and Commerce’s strategic plans. Basic information, such as how many agreements exist, what agencies and other parties are involved, and total funding through agreements, could be used to further develop the strategic plan linkages.

¹⁷*NOAA Administrative Order 201-105* governs only “memoranda of understanding or agreement” between NOAA and other organizations, and excludes grants, procurement contracts, cooperative agreements, cooperative research and development and invention licensing agreements, and reimbursable agreements.

From an administrative perspective, a central database of agreements would help OAR programs in administering and maintaining their agreements. By having relevant dates in the system, programs could easily identify which agreements are due for renewal, termination, or review. Also, officials could quickly respond to inquiries on particular agreements by accessing the system by identifying number, project title, or contact name.

A central OAR database should include certain key elements, including project title, parties, termination date, review date, legal authority, funding information, and contact person or office. The database should also identify the type of agreement, *i.e.* memoranda of understanding or agreement, reimbursable agreement, or obligation agreement. This system could also be used to establish a document numbering system. Each entry would be assigned a unique number, which would then be placed on the actual agreement and any related documents. OAR could then better identify and track the physical documents. Given the large number of OAR agreements and their importance to achieving OAR's mission, a comprehensive database of agreements with relevant information would help management and program officials control and maintain their agreements.

As we discussed on page 19, we will be making recommendations to the Department in a separate report. One of our recommendations is the establishment of a Department-wide database of agreements. We have identified two options for creating a central departmental list of agreements. First, the Department could develop one standard system or database program that each bureau can access to add, modify, or delete agreements. Alternatively, each bureau could maintain its own database that is compatible with requirements specified by the Department. The Department would define which data elements are required for a centralized list and then require the bureaus to periodically provide the information electronically to be uploaded into the central list at the Department level. Whichever approach is selected, OAR should closely coordinate with the Department to ensure that its agreements system is consistent and compatible with the forthcoming departmental policy.



In its response to our draft report, NOAA concurred with our recommendation to develop a centralized database of all OAR agreements. NOAA will formalize requirements for this database upon receipt of the forthcoming departmental guidance.

RECOMMENDATIONS

We recommend that the Under Secretary for Oceans and Atmosphere take the following actions to:

1. Draft policies and procedures for preparing and processing OAR agreements that are consistent with forthcoming departmental guidance. These policies should include at least the following requirements: full cost recovery, citation of legal authorities, appropriate level of approval, total project costs, budget summaries, applicable justifications, and termination dates and/or review periods. There should also be formal procedures to notify other agencies of what terms are required in OAR agreements and to modify or amend incomplete agreements.
2. Once OAR policies and procedures have been finalized, provide training to all appropriate current and future staff on how to properly prepare and process agreements.
3. Make all information relevant to preparing and processing agreements available internally through NOAA's intranet.
4. Regularly address agreements in future annual administrative and management conferences, including any subsequent changes in the law and agency procedures.
5. In consultation with OGC, draft policies and procedures for obtaining legal review of OAR agreements.
6. Develop standard language or form agreements for use by the programs.
7. Consistent with forthcoming departmental guidance, develop a centralized database of all OAR agreements, including such information as project title, parties, termination date, review date, legal authority, funding information, contact person or office, and type of agreement. This system can also be used to establish a document numbering system.

ATTACHMENT: Agency Response



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
CHIEF FINANCIAL OFFICER/CHIEF ADMINISTRATIVE OFFICER

OS EXECUTIVE SECRETARIAT

1998 MAY -7 AM 11: 23

MAY 6 1998

MEMORANDUM FOR: Johnnie Frazier
Acting Inspector General

FROM: Andrew Moxam *Andrew Moxam*
Deputy Chief Financial Officer/
Chief Administrative Officer

SUBJECT: Draft Inspection Report: OAR's Interagency
and Other Special Agreements Require
Additional Improvements for Compliance,
Report No. IPE-10310

Thank you for the opportunity to review and comment on the draft inspection report concerning the Office of Oceanic and Atmospheric Research's (OAR) management of interagency and other special agreements. We are very pleased to see that the draft report found that OAR appropriately uses agreements to support its mission and it recognizes that significant improvements have been made in OAR's management of its agreements since the 1996 Office of the Inspector General (OIG) audit report.

The subject report also recognizes that there is still work to be done and the National Oceanic and Atmospheric Administration agrees. Efforts are already underway to develop policies and procedures that are consistent with forthcoming departmental guidance. The draft OIG report will help in this process. We appreciate the detailed and thorough analysis reflected in the report, and we recognize and appreciate the effort and expertise that went into the inspection.

Our comments on specific recommendations are attached.

Attachment



Printed on Recycled Paper



NOAA Draft OIG Report Response
Draft Report IPE-10310

Recommendation No. 1: Draft policies and procedures for preparing and processing OAR agreements that are consistent with forthcoming departmental guidance. These policies should include at least the following requirements: full cost recovery, citation of legal authorities, appropriate level of approval, total project costs, budget summaries, applicable justifications, and termination dates and/or review periods. There should also be formal procedures to notify other agencies of what terms are required in OAR agreements and to modify or amend incomplete agreements.

OAR Response: We concur with this recommendation, and upon receipt of the departmental guidance, will draft the recommended policies and procedures. We have begun preliminary work for some of the elements in the recommendation.

Recommendation No. 2: Once OAR policies and procedures have been finalized, provide training to all appropriate current and future staff on how to properly prepare and process agreements.

OAR Response: We concur and will develop an in-house training course centered around the new policies and procedures when they have been completed.

Recommendation No. 3: Make all information relevant to preparing and processing agreements available internally through NOAA's Intranet.

OAR Response: We concur and will develop a plan to provide this information to NOAA for installation on the Intranet. The information will also be available on OAR's Intranet.

Recommendation No. 4: Regularly address agreements in future annual administrative and management conferences, including any subsequent changes in the law and agency procedures.

OAR Response: We concur and will provide updated information at OAR conferences and on regularly scheduled conference calls.

Recommendation 5: In consultation with OGC, draft policies and procedures for obtaining legal review of OAR agreements.

OAR Response: We concur and have begun preliminary work to carry out this recommendation.

Recommendation 6: Develop standard language or form agreements for use by the programs.

OAR Response: We concur. This standardization will apply to policies and procedures noted in Recommendations 1 and 3, and will be applied to training and information updates as well.

Recommendation 7: Consistent with forthcoming departmental guidance, develop a centralized database of all OAR agreements, including such information as project title, parties, termination date, review date, legal authority, funding information, contact person or office, and type of agreement. This system can also be used to establish a document numbering system.

OAR Response: OAR concurs and will formalize requirements for this database upon receipt of the noted departmental guidance.