

**U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

TRANSMITTAL

NUMBER: NAO 201-105

DATE: October 13, 1992

SUBJECT: MEMORANDA OF AGREEMENT OR UNDERSTANDING

1. THIS TRANSMITS:

NAO 201-105, Memoranda of Agreement or Understanding, dated October 13, 1992.

2. PURPOSE:

This Order provides information and guidance on the internal National Oceanic and Atmospheric Administration (NOAA) procedures and requirements governing the development, review, and approval of Memoranda of Agreement (MOA) or Memoranda of Understanding (MOU) between NOAA and other organizations.

3. FILING INSTRUCTIONS:

Please file this Order in the proper numerical sequence.

National Oceanic and Atmospheric Administration	NOAA Administrative Order 201-105	
NOAA ADMINISTRATIVE ORDER SERIES	DATE OF ISSUANCE October 22, 1992	EFFECTIVE DATE October 13, 1992
SUBJECT MEMORANDA OF AGREEMENT OR UNDERSTANDING		
<p><u>SECTION 1. PURPOSE.</u></p> <p>This Order provides information and guidance on the internal National Oceanic and Atmospheric Administration (NOAA) procedures and requirements governing the development, review, and approval of Memoranda of Agreement (MOA) or Memoranda of Understanding (MOU) between NOAA and other organizations. The terms, MOA and MOU are interchangeable. The acronym MOA/U shall be used throughout this Order for consistency.</p> <p><u>SECTION 2. SCOPE.</u></p> <p>.01 This Order <u>does not</u> prescribe procedures for the development and approval of any agreement that provides for the legal authority to obligate funds. Specifically, it <u>does not apply</u> to the development and approval of any <u>contract, grant, or cooperative agreement</u>, since those terms are defined by the Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6303 - 6305, <u>nor</u> to the following agreements which are to be developed and approved in accordance with other NOAA Administrative Orders (NAO):</p> <p>a. <u>Cooperative Research and Development and Invention Licensing Agreements</u> under the Federal Technology Transfer Act of 1989, which are governed by NAO 201-103, Cooperative Research and Development and Invention Licensing Agreements Under the Federal Technology Transfer Act of 1989 (Public Law 99-502), dated November 13, 1989. As defined in that Order, these are agreements between a NOAA laboratory and one or more non-Federal parties in which the NOAA laboratory provides personnel, services, equipment, or other resources with or without reimbursement, but not funds, and the non-Federal party provides funds, personnel, services, facilities, equipment, or other resources toward the conduct of specified research and development efforts consistent with the NOAA mission.</p> <p>b. <u>Reimbursable Agreements</u>, which are governed by Chapter 02, Section 03 of the NOAA Budget Handbook, are agreements which typically involve the commitment and transfer of funds for services performed <u>or</u> for the use of facilities or equipment.</p> <p>.02 Agreements involving a <u>foreign government, agency, or citizen</u> are subject to the basic development and review procedures established by this Order. <u>However, International Agreements</u> subject to the Case Act and therefore <u>clearance</u> by the Department of State pursuant to its Circular 175 also are subject to the review procedures of Department Administrative Order (DAO)</p>		

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218-4, Treaties and Other International Agreements, dated May ~~7~~, 1984, and NOAA Directives Manual (NDM) 20-10, Policies and Procedures Regarding the Coordination and Clearance Within NOAA of Treaties and Other International Agreements, dated September 26, 1979. The criteria for determining which agreements fall within this category are found in Section 3. of DAO 218-4.

SECTION 3. POLICY.

.01 In furthering its programs, NOAA becomes involved on a continuing basis with a large number of international, Federal, state, and local agencies, universities, and other private institutions. These relationships are encouraged and frequently require or are aided by proper documentation. The use of the MOA/U to formally establish the terms of such a relationship is appropriate whenever:

- a. undertakings are assumed by both parties;
- b. an official documentation of these undertakings is required or may be of interest to third parties such as the Congress, state legislatures, or university trustees; and
- c. the undertakings are expected to continue over an extended period of time, although typically they can be terminated by either party on relatively short notice.

.02 All MOA/Us shall be fully documented to reflect specific responsibilities or the division of work between the agreeing organizations using the Attachment to this Order as a guide.

.03 Where a relationship does not involve all the above elements of the MOA/U (e.g., the obligations are minor and/or of limited duration) but a record of the relationship is still desirable, a letter or an exchange of letters may be a more appropriate format.

.04 Competitive MOA/Us.

a. MOA/Us covered by this Order do not constitute the legal authority for NOAA to obligate funds. However, they can provide the underlying basis for awarding a non-competitive cooperative agreement when the MOA/U is developed and approved on a competitive basis in accordance with this section.

b. When considering a competitive MOA/U, the interested NOAA program office shall publish an announcement in the Federal Register, and other publications as desired, describing the purpose of the MOA/U and requesting interested parties, normally universities and other research organizations, to apply. The announcement shall indicate any funding anticipated and shall establish the criteria for selection, such as the strength of the curricula and the faculty and the suitability of on-site facilities.

c. The announcement shall provide for a reasonable period in which to respond, normally sixty (60) days, after which the program office shall objectively evaluate the responses to determine whether to enter into a competitive MOA/U and, if so, with which applicant. This determination shall be concurred by the Chief, Grants Management Division (OA32), Procurement, Grants and Administrative Services Office, Office of Administration, and the Office of General Counsel (GC).

d. In approving a competitive MOA/U under this section, reviewers shall take into account whether NOAA will place a person on-site, the extent of such person's involvement with the relevant community, e.g., teaching and helping graduate students, and the extent to which the person will be involved in the development of projects which may receive future NOAA funding.

e. A competitive MOA/U under this section shall provide a basis for awarding grants and cooperative agreements to the selected cooperative partner for a period of up to four (4) or five (5) years; after which, the relationship shall be reevaluated using a procedure similar to that set forth in Sections 3.04b. and 3.04c. of this Order including the publication of notice in the Federal Register.

SECTION 4. RESPONSIBILITIES.

.01 MOA/Us can be initiated and developed at any organizational level. (Subject to the coordination and approval procedures contained in this Order, MOA/Us should be signed at the lowest level to which the significant responsibilities have been delegated.)

.02 The Under Secretary and Administrator of NOAA shall approve or sign any proposed MOA/U which involves a major policy decision or has a potentially controversial or public interest implication. Such MOA/Us shall be cleared with all interested Assistant Administrators, the Office of General Counsel, and all relevant Staff Offices.

.03 Assistant Administrators or Line Office Directors shall sign all MOA/Us for which they have been delegated the authority except for those identified in Section 4.02 of this Order. Assistant Administrators and Line Office Directors shall:

a. designate a MOA/U representative and provide the individual's name, telephone number, and mailing address to the Paperwork Management Branch (OA332), Administrative Services Division, Procurement, Grants and Administrative Services Office, Office of Administration;

b. ensure that the level and scope of the proposed MOA/Us are properly assessed;

c. exercise care in developing MOA/Us and ensure that proper policy, legal, and administrative reviews are completed prior to

approval; (Legal reviews should be conducted by the Office of General Counsel during the negotiations stage, to the extent practicable.)

- d. ensure that effective program review and monitoring is applied to each MOA/U;
- e. ensure that each MOA/U requiring clearance and/or signature by higher-level officials is personally reviewed and cleared by the supervising Assistant Administrator or principal deputy prior to submission of the MOA/U for clearance and/or signature;
- f. require that each MOA/U have a mandatory start and termination date;
- g. make a periodic review of each MOA/U to determine if the MOA/U should be renewed, amended, updated, or cancelled and to determine if the provisions and objectives are being met;
- h. forward appropriate notices of termination, changes, or amendments to a MOA/Us to appropriate parties, including the Paperwork Management Branch; and
- i. consult with interested Assistant Administrators when appropriate.

.04 Line Office MOA/U Representatives shall:

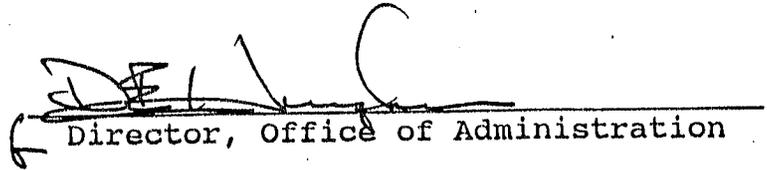
- a. serve as an authoritative source of information regarding MOA/Us initiated or approved within the Line Office;
- b. provide information about proposed and existing MOA/Us;
- c. maintain a repository of copies of their Line Office MOA/Us and notices of change or terminations; and
- d. provide the Paperwork Management Branch with a copy of all completed MOA/Us.

.05 The Executive Secretariat (ES), Office of Administration, shall serve as the focal point for clearance or signature of the Under Secretary and Administrator (A), Deputy Under Secretary (DUS), and general and special staff offices at the Under Secretary and Administrator level.

.06 The Director, Office of Administration (OA), through the Paperwork Management Branch, shall serve as the NOAA focal point for repository of copies of all NOAA MOUs and for directing inquiries to the knowledgeable NOAA representative or office.

SECTION 5. EFFECT ON OTHER ISSUANCES.

This Order supersedes NOAA Directives Manual (NDM) 16-17,
Memoranda of Agreement, dated November 12, 1981.


Director, Office of Administration

Attachment

Office of Primary Interest:
Office of Administration
Procurement, Grants and Administrative Services Office
Administrative Services Division
Paperwork Management Branch (OA332)

Memorandum of Agreement

Between the

National Oceanic and Atmospheric Administration (NOAA)

and the

(Name of Other Party)

Start Date _____

Proposed End Date _____

I. PURPOSE AND SCOPE

Briefly describe the purpose and objectives of the agreement. Also include general introductory information about the functions of the parties involved.

II. REFERENCES AND AUTHORITY

State statutory and/or regulatory authorities authorizing the objectives of the agreement e.g., applicable Public Law, U.S. Code Citations, Executive Orders, GAO directives(s). Also cite any other pertinent references such as agency directive(s), previous agreements, correspondence, or memoranda, etc.

III. SUBSTANCE

Provide a comprehensive description of what is being agreed to, responsibilities of the commitments of each party; and the terms and conditions for performance (including delegations of authority, channels and protocols for working relationship, liaison, regulations, policies, and procedures).

IV. PERIOD

State the duration of the agreement along with a self-cancellation clause, if needed.

V. MODIFICATION/CANCELLATION PROVISION

Specify provision for future modifications or cancellations.

VI. OTHER PROVISIONS - Under this heading, include the following:

"Nothing herein is intended to conflict with current NOAA or (name of agency) directives. If the terms of this agreement are inconsistent with existing directives of either of the agencies entering into this agreement, then

those portions of this agreement which are determined to be inconsistent shall be invalid; but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. At the first opportunity for review of the agreement, all necessary changes will be accomplished by either an amendment to this agreement or by entering into a new agreement, whichever is deemed expedient to the interest of both parties."

"Should disagreement arise on the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within thirty days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution."

VII. SIGNATURE OF EACH PARTY

Include the signature, title, address, and date for each party.

Signature	Date	Signature	Date
Typed Name		Type Name	
Title		Title	
Address		Address	

