

Highlights of Federal Rule on Compensatory Mitigation

In-Lieu Fee Programs in Washington State

Role of Interagency Review Team

- The Corps establishes an Interagency Review Team (IRT) to review documentation for the establishment and operation of in-lieu fee (ILF) programs. The Corps seeks to include all public agencies and Native American Tribes with a substantive interest in the establishment and operation of the ILF program on the IRT.
- The primary role of the IRT is to review the instrument and advise the Corps and Ecology, in their roles as co-chairs of the IRT, regarding the establishment and management of the ILF program pursuant to the provisions of the instrument.
- During ILF program proposal review, the IRT will review the prospectus, instrument, and other appropriate documents and provide comments to the Corps and Ecology.
- Members of the IRT may sign the ILF program instrument (instrument) if they choose. By signing, IRT members indicate their agreement with the terms of the instrument. IRT members may choose instead to submit a letter expressing concurrence with the instrument. There are two levels of signature for the document:
 - Party – This is typically only the Sponsor, Corps and Ecology. Parties to the instrument have specific obligations that they must uphold as part of the document's contract language. All parties must sign in order for the instrument to be fully executed.
 - Signatory/IRT Member – Signatories are signing only to show agreement with the terms of the instrument.
- After approval of the instrument, the IRT also advises the Corps and Ecology in reviewing ILF receiving site plans, assessing monitoring reports, recommending remedial or adaptive management measures, approving credit releases, and approving modifications to an instrument.
- Comments from IRT members must be received by the Corps and Ecology within the specified time limits. Comments received after deadlines will only be considered at the discretion of the Corps and Ecology.

Proposed Program Review Process

- The sponsor prepares all documentation and the IRT reviews, comments, and if appropriate, approves.

- Primary documents include:
 - Prospectus – An overview of proposed ILF program that serves as basis for public and initial IRT comment. Complete prospectus includes objectives, explanation of how program will be established and operated, proposed service area, need and feasibility of program, ownership and long-term management strategy, qualifications of sponsor, compensation planning framework, and description of program account.
 - Instrument – Provides authorization for the ILF program to provide credits to be used as mitigation. Instrument must include description of service area, accounting procedures, statements on legal responsibilities of sponsor, default and closure provisions, reporting protocols, compensation planning framework, specifics on allocation of advance credits, method for determining future project-specific debits, credits and fees, and description of program account.
- The IRT receives at least one draft and one final version of the instrument for review. Review of each version of the instrument will need to be completed within 30 days of document receipt.
 - Note: Approval of the Instrument is likely to be an iterative process where more than one draft will be needed. Seattle District Corps has not yet approved an ILF program under the 2008 federal rule and potential sponsors and IRT are learning as the process unfolds.