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## DEPARTMENT OF AGRICULTURE

### Agricultural Research Service

#### 7 CFR Part 550

RIN-0518-AA03

#### General Administrative Policy for Non-Assistance Cooperative Agreements

**AGENCY:** Agricultural Research Service, REE, USDA.

**ACTION:** Final rule.

**SUMMARY:** This Part establishes uniform guidelines within the Research, Education, and Economics (REE) mission area on the use, award, and administration of cooperative agreements awarded under the authority of 7 U.S.C. 3318(b).

**DATES:** *Effective Date:* October 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** Kim Hicks, (301) 504-1141.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 1424 of the Food Security Act of 1985, Public Law No. 99-198, amended Section 1472(b) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3318(b)) to authorize the Secretary to use a cooperative agreement as a legal instrument reflecting a relationship between the Secretary and a State cooperative institution, State department of agriculture, college, university, other research or educational institution or organization, Federal or private agency or organization, individual, or any other party, if the Secretary determines (a) the objectives of the agreement will serve a mutual interest of the parties to the agreement in agricultural research, extension, and teaching activities, including statistical reporting; and (b) all parties will contribute resources to the accomplishment of those objectives.

The cooperative agreements authorized by 7 U.S.C. 3318(b) have been determined to be neither procurement nor assistance in nature and, therefore, not subject to the provisions of Federal Grant and Cooperative Agreement Act of 1977. These cooperative agreements are exempt from Department of Agriculture (USDA) rules and regulations promulgated at 7 CFR 3015, 3016, and 3019. The agreements covered by this rule are characterized by mutual interest and benefit to both parties, and reflect the unique cooperative relationship that exists between the REE agencies and the various public and private organizations engaged in the conduct of agricultural research, extension, and teaching activities.

Although the nonassistance cooperative agreements described in this rule are substantively different than the Federal assistance-type cooperative agreements used by most Federal awarding agencies and are not subject to the grants management Common Rule found at 2 CFR 215, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-profit Organizations," REE has decided to apply many of the provisions of the Common Rule as a matter of good business practice. Many of the standards and provisions of the Common Rule have been adopted in whole or in part in the proposed rule because they embody principles of good management and sound financial stewardship important to all Federal assistance and nonassistance awards. Additionally, we have included by reference specific provisions of other Federal assistance-type or procurement guidance documents such as 7 CFR 3052, 42 U.S.C. 6962, and the Cash Management Improvement Act, codified at 31 CFR part 205, for the same reasons.

#### Comments

On September 21, 2006, the Office of Management and Budget (OMB) reviewed the workplan on the proposed rule and determined the docket to be not significant. The proposed rule was published in the **Federal Register** on July 26, 2007, and the comment period ended on September 24, 2007.

We received two comments; one comment that was irrelevant to the proposed rule and one comment from

the University of California, Oakland, California.

The University of California welcomed the proposed rule and commended the Agency for its efforts, especially with regard to explicit adoption of some of the prior approval authorities consistent with OMB Circular A-21. The University expressed concerns with regard to resource contributions and payment frequency. These concerns are duly noted. However, ARS implemented the same guidelines for resource contributions and payment frequency as part of the general provisions governing all ARS "Non-assistance Cooperative Agreements" on September 1, 2004. The same requirements are stated verbatim in the proposed rule. ARS and the University have cooperated successfully under these guidelines for nearly four years with minimal disruption to routine business operations. Therefore, ARS is making no changes to the final rule.

#### Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866.

#### Executive Order 12372

The programs covered by this rule are listed in the Catalog of Federal Domestic Assistance (CFDA) under the following CFDA numbers: The Agricultural Research Service found at 10.001; the Economics Research Service found at 10.250; and the National Agricultural Statistics Service found at 10.950.

Because this rule does not authorize any programs or program expenditures, this notice is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### Executive Order 12988—Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this rule, (1) State and local laws and regulations will not be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

## Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule will be submitted for approval to OMB.

### List of Subjects in Part 550

Agricultural research, Non-assistance, Procedural rules, Research, Science and technology.

■ For the reasons stated in the preamble, the Department of Agriculture, Agriculture Research Service, amends 7 CFR chapter V by adding part 550 as set forth below.

## PART 550—GENERAL ADMINISTRATIVE POLICY FOR NON-ASSISTANCE COOPERATIVE AGREEMENTS

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**Authority:** Section 1472(b) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3318(b)).

### Subpart A—General

#### § 550.1 Purpose and scope.

This Part establishes REE-wide standards of USDA's award and administration of non-assistance cooperative agreements executed under the authority of Section 1472(b) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3318(b)). These agreements are neither procurement nor assistance in nature, and therefore, are not subject to the Federal Grant and Cooperative Agreements Act of 1977. Accordingly, proper use of these cooperative agreements will promote and facilitate partnerships between the REE Agency and the Cooperator in support of research, extension and education projects of mutual benefit to each party.

#### § 550.2 Definitions.

*Accrued expenditures* means the charges incurred by the Cooperator

during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and

(3) Other amounts becoming owed under programs for which no current services or performance is required.

*Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the Cooperator's regular accounting practices.

*Advance* means a payment made to a Cooperator upon its request either before outlays are made by the Cooperator or through the use of predetermined payment schedules.

*Authorized Departmental Officer (ADO)* means the REE Agency's official delegated authority to negotiate, award, administer, suspend, and terminate non-assistance cooperative agreements.

*Authorized Departmental Officer's Designated Representative (ADODR)* means the REE Agency's technical representative, acting within the scope of delegated authority, who is responsible for participating with the Cooperator in the accomplishment of a cooperative agreement's objectives and monitoring and evaluating the Cooperator's performance.

*Award* means a non-assistance cooperative agreement which provides money or in-kind services or property in lieu of money, to an eligible Cooperator. The term does not include: Financial assistance awards in the form of grants, cooperative agreements, loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and contracts which are required to be entered into and administered under procurement laws and regulations.

*CFR* means the Code of Federal Regulations.

*Closeout* means the process by which a REE Agency determines that all applicable administrative actions and all required work under the agreement has been completed by the Cooperator and REE Agency.

*Contract* means a procurement contract entered into by the cooperator or a subcontractor of the cooperator pursuant to the cooperative agreement.

*Cooperator* means any State agricultural experiment station, State cooperative extension service, all colleges and universities, other research or education institutions and organizations, Federal and private agencies and organizations, individuals, and any other party, either foreign or domestic, receiving an award from a REE Agency.

*Disallowed costs* means those charges incurred under the cooperative agreement that REE determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the cooperative agreement.

*Electronic Funds Transfer (EFT)* means electronic payment methods used to transfer funds to a Cooperator's bank account (including HHS/PMS).

*Equipment* means tangible nonexpendable personal property contributed or acquired by either an REE Agency or by the Cooperator, having a useful life of more than one year and an acquisition cost of \$5000 or more per unit. However, consistent with Cooperator policy, lower limits may be established.

*Funding period* means the period of time when Federal funding is available for obligation by the Cooperator.

*HHS-PMS* means the Department of Health and Human Services/Payment Management System (also see EFT).

*i-Edison* (Interagency Edison) is a database, which provides Federal grantee/Cooperator organizations and participating Federal agencies with the technology to electronically manage extramural invention portfolios in compliance with Federal reporting requirements.

*Intangible property* means, trademarks, copyrights, patents and patent applications.

*Obligations* means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the Cooperator during the same or a future period.

*OMB* means the Office of Management and Budget.

*Outlays or expenditures* means charges made to the project or program. Outlays and expenditures also include cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the Cooperator for goods and other property received, for services performed by employees, contractors, subrecipients, and other payees and other amounts becoming owed under programs for which no

current services or performance are required.

*Peer Review* is a process utilized by REE Agencies to:

(1) Determine if agency sponsored research projects have scientific merit and program relevance;

(2) Provide peer input and make improvements to project design and technical approaches;

(3) Provide insight on how to conduct the highest quality research in support of Agency missions and programs.

*Personal property* means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

*Principle Investigator (PI)* means the individual, designated by the Cooperator, responsible for directing and monitoring the performance, the day-to-day activities, and the scientific and technical aspects of the Cooperator's portion of a REE funded project. The PI works jointly with the ADODR in the development of project objectives and all other technical and performance related aspects of the program or project. See additional responsibilities of PI in § 550.32.

*Prior approval* means written approval by an ADO evidencing prior consent.

*Program income* means gross income earned by the Cooperator that is directly generated by a supported activity or earned as a result of the award. Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally funded projects, the sale of commodities or items fabricated under an award, and license fees and royalties on patents and copyrights. Program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them, or interest earned on advances of Federal funds.

*Project costs* means all allowable costs, incurred by the Cooperator and the REE Agency toward the completion of the project.

*Project period* means the period established in the cooperative agreement during which Federal contributions begin and end.

*Property* means, unless otherwise stated, personal property, equipment, intangible property.

*Publications* mean all types of paper based media including electronic and audio media.

*Real property* means land, including land improvements, structures and

appurtenances thereto, but excludes movable machinery and equipment.

*REE Agency* means the USDA Agency that enters into a cooperative agreement with the cooperator.

*State Cooperative Institutions* are defined in statute as institutions designated or receiving funds pursuant to:

(1) The First Morrill Act—The Land Grant Institutions.

(2) The Second Morrill Act—The 1890 Institutions.

(3) The Hatch Act of 1887—The State Agricultural Experiment Stations.

(4) The Smith-Lever Act—The State Extension Services.

(5) The McIntire-Stennis Act of 1962—The Cooperating Forestry Schools.

(6) Public Law 95-113, Section 1430—A college or university having an accredited college of veterinary medicine or a department of veterinary science or animal pathology or similar unit conducting animal health and disease research in a State Agricultural Experiment Station.

(7) Public Law 97-98, Section 1475b—Colleges, universities, and Federal laboratories having a demonstrated capacity in aquaculture research.

(8) Public Law 97-98, Section 1480—Colleges, universities, and Federal laboratories having a demonstrated capacity of rangeland research.

(9) Equity in Educational Land—Grant Status Act of 1994 (7 U.S.C. 301 note) 1994 Institutions.

*Subaward* means an award in the form of money or in-kind services or property in lieu of money, made under an award by a Cooperator to an eligible subrecipient or by a subrecipient to a lower tier subrecipient.

*Subrecipient* means the legal entity to which a subaward is made and which is accountable to the Cooperator for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the REE Agency.

*Supplies* means all personal property excluding equipment, intangible property, as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

*Suspension* means an action by a REE Agency that temporarily withdraws Federal sponsorship under an award,

pending corrective action by the Cooperator or pending a decision to terminate the award by the REE Agency. Suspension of an award is a separate action from suspension under Federal Agency regulations implementing Executive Orders 12549 and 12689, "Debarment and Suspension."

*Termination* means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

*Unliquidated obligations* are the amount of obligations incurred by the Cooperator for which an outlay has not been recorded.

*Unobligated balance* means the portion of the funds authorized by the REE Agency that has not been obligated by the Cooperator and is determined by deducting the cumulative obligations from the cumulative funds authorized.

*Unrecovered indirect cost* means the difference between the amount awarded and the amount, which could have been awarded under the Cooperator's approved negotiated indirect cost rate.

*U.S.C.* means the United States Code.

*USDA* means the United States Department of Agriculture.

#### **§ 550.3 Applicability.**

This Part applies to all REE non-assistance cooperative agreements awarded under the authority of 7 U.S.C. 3318(b).

#### **§ 550.4 Eligibility.**

REE agencies may enter into non-assistance cooperative agreements with State agricultural experiment stations, State cooperative extension services, all colleges and universities, other research or education institutions and organizations, Federal and private agencies and organizations, individuals, and any other party, either foreign or domestic, to further research, extension, or teaching programs in the food and agricultural sciences. (7 U.S.C. 3318(b)(1)).

#### **§ 550.5 Competition.**

REE agencies may enter into non-assistance cooperative agreements, as authorized by this Part, without regard to any requirements for competition. (7 U.S.C. 3318(e)).

#### **§ 550.6 Duration.**

REE may enter into non-assistance cooperative agreements for a period not to exceed five years.

#### **§ 550.7 Exceptions.**

This Part does not apply to:

(a) USDA Federal Financial Assistance agreements subject to 7 CFR 3015, 3016, or 3019.

(b) Procurement contracts or other agreements subject to the Federal Acquisition Regulation (FAR) or the Agriculture Acquisition Regulation (AgAR); on Agreements providing loans or insurance directly to an individual.

#### **§ 550.8 Conflicting policies and deviations.**

This Part supersedes and takes precedence over any individual REE regulations and directives dealing with the award and administration of non-assistance cooperative agreements entered into under the delegated authority of 7 U.S.C. 3318(b). This Part may only be superseded, in whole or in part, by either a specifically worded statutory provision or a waiver authorized by the USDA-REE-Administrative and Financial Management (AFM)-Extramural Agreements Division (EAD) or any successor organization. Responsibility for developing, interpreting, and updating this Part is assigned to the USDA-REE-AFM-EAD or any successor organization.

#### **§ 550.9 Other applicable regulations.**

Related issuances are in other Parts of the CFR and the U.S.C. as follows:

(a) 7 CFR Part 3017 "Governmentwide Debarment and Suspension";

(b) 7 CFR Part 3018 "New Restrictions on Lobbying";

(c) 7 CFR Part 3052 "Audits of States, Local Governments, and Nonprofit Organizations";

(d) 7 CFR 3015.175 (b) "Copyrights";

(e) 37 CFR 401.14 "Standard Patent Rights Clause";

(f) 15 U.S.C. 205a *et seq.*—"The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act";

(g) 42 U.S.C. 6962 "Resource Conservation and Recovery Act (RCRA)".

#### **§ 550.10 Special Award Conditions.**

(a) REE Agencies may impose special conditions and/or additional requirements to a non-assistance agreement if a Cooperator:

(1) Has a history of poor performance,

(2) Is not financially stable,

(3) Has a management system that does not meet the standards prescribed in this Part,

(4) Has not conformed to the terms and conditions of a previous award, or

(5) Is not otherwise responsible.

(b) Special conditions and/or additional requirements may be added to an award provided that the Cooperator is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being

imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

### **Subpart B—Formation of Agreements**

#### **§ 550.11 Purpose.**

Sections 550.12 through 550.18 prescribe instructions and other pre-award matters to be used in establishing a non-assistance cooperative agreement.

#### **§ 550.12 Statutory authorization required (REE Agency).**

REE Agencies must have programmatic statutory authority for the proposed project prior to entering into any non-assistance cooperative agreement.

#### **§ 550.13 Mutuality of interest.**

The REE Agency shall document both parties interest in the project. Mutual interest exists when both parties benefit in the same qualitative way from the objectives of the agreement. If one party to the agreement would independently have an interest in the project, which is shared by the other party, and both parties pool resources to obtain the end result of the project, mutual interest exists.

#### **§ 550.14 Indirect cost/tuition remission.**

(a) *Indirect Cost.* (1) State Cooperative Institutions: Payment of indirect costs to State Cooperative Institutions in connection with non-assistance cooperative agreements awarded under the authority of 7 U.S.C. 3318(b) is prohibited. This prohibition does not apply to funds for international agricultural programs conducted by a State cooperative institution and administered by the Secretary or to funds provided by a Federal agency for such cooperative program or project through a fund transfer, advance or reimbursement. (7 U.S.C. 3319.)

(2) Non-Profit Organizations: Payment of indirect costs to non-profit institutions in connection with USDA cooperative agreement, under the authority of 7 U.S.C. 3318(b), is limited to 10 percent of the total direct cost of the project. (Annual Appropriations Bill for Agriculture and Related agencies, General Provisions.)

(3) All other cooperating organizations: With the exception of paragraphs (a)(1) and (2) of this section, payment of indirect costs is allowable in connection with REE non-assistance cooperative agreements. Reimbursement

of indirect costs is limited to the percentage(s) established in the Cooperator's negotiated indirect cost rate schedule.

(4) In any case, the REE Agency shall not reimburse indirect costs prior to receipt of the Cooperator's negotiated indirect cost rate schedule.

(b) *Tuition Remission.* (1) State Cooperative Institutions: Reimbursement of tuition expenses to State Cooperative Institutions in connection with REE non-assistance cooperative agreements is prohibited. (7 U.S.C. 3319)

(2) All other cooperating organizations: Except for paragraph (b)(1) of this section, tuition remission is an allowable expense as determined in accordance with the cost principles applicable to the Cooperator. REE agencies shall negotiate and approve such payments as related to the scope and objectives of the non-assistance agreement.

#### **§ 550.15 Resource contribution.**

Each party must contribute resources towards the successful completion of the project. Required resource contributions must be substantial enough to substantiate a true stake in the project as determined by the ADO.

(a) *REE Agency's Contribution.* The REE Agency's contribution must consist of the total in-house costs to the REE Agency and the total amount to be reimbursed by the REE Agency to the Cooperator for all allowable costs agreed to in advance as reflected in the cooperative agreement.

(b) *Cooperator's Contribution.* (1) The Cooperator's contribution must be no less than 20 percent of the total of the resource contributions under the cooperative agreement. Resource contributions of the Cooperator must consist of a sufficient amount of itemized direct costs to substantiate a true stake in the project as determined by the ADO. The Cooperator's contribution must be maintained at 20 percent of Federal funding throughout the life of the cooperative agreement.

(2) Cooperators share of contributions may consist of "in-kind" contributions and may also include unrecoverable indirect costs. Such costs may be accepted as part of the Cooperator's resource contribution when all of the following criteria are met:

(i) Costs are verifiable from the Cooperator's records.

(ii) Costs are not included as contributions for any other federally assisted project or program.

(iii) Costs are necessary and reasonable for proper and efficient

accomplishment of project or program objectives.

(iv) Costs are allowable under the applicable cost principles.

(v) Costs are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(vi) Costs conform to other provisions of this Part, as applicable.

(3) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as resource contributions if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the Cooperator's organization. In those instances in which the required skills are not found in the Cooperator organization, rates shall be consistent with those paid for similar work in the labor market in which the Cooperator competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(4) When an employer other than the Cooperator furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(5) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(6) The value of donated property shall be determined in accordance with the usual accounting policies of the Cooperator, with the following qualifications.

(i) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the Cooperator as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the Cooperator.

(ii) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(iii) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately owned building in the same locality.

(iv) The value of loaned equipment shall not exceed its fair rental value.

(v) The following requirements pertain to the Cooperator's supporting records for in-kind contributions from third parties.

(A) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the Cooperator for its own employees.

(B) The basis for determining the valuation for personal service, material, equipment, buildings, and land shall be documented.

#### **§ 550.16 Project development.**

REE provides partial funding to Cooperators to support research projects that contribute to REE program objectives and help carry out the REE mission. The Cooperator's PI and the REE Agency's ADODR shall jointly develop the following documentation:

(a) *Project Plan*—A plan that shall be jointly developed by the REE ADODR and the Cooperator that is compliant with an REE program requirement. The project plan will utilize the REE provided format for external peer review.

(b) *Statement of Work*—A detailed statement of work shall be jointly planned, developed and prepared by the Cooperator's PI and the awarding Agency's ADODR consisting of the following:

- (1) Objective
- (2) Approach
- (3) Statement of Mutual Interest
- (4) Performance Responsibilities
- (5) Mutual Agreements

(c) *Budget*—A plan that shall be jointly developed by the REE ADODR and the Cooperator PI outlining the following resource contributions:

- (1) Total amount to be reimbursed by the REE Agency to the Cooperator. (Direct and Indirect Costs as applicable)
- (2) Total in-house costs to the REE Agency. (Direct and indirect costs)
- (3) Total in-house costs to the Cooperator. (Direct and indirect costs)

#### **§ 550.17 Peer review.**

Upon request of the REE Agency, cooperators may be requested to provide documentation in support of peer review activities and cooperator personnel may be requested to participate in peer review forums to assist the REE Agency in their reviews.

**§ 550.18 Assurances/certifications.**

(a) Governmentwide Debarment and Suspension (Non procurement)—7 CFR 3017;

(b) Governmentwide requirements for Drug-Free Workplace—7 CFR 3021;

(c) Non-discrimination. The Cooperator assures compliance with the following requirement: No person in the United States shall, on the grounds of race, color, national origin, sex, age, religion, political beliefs, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any project or activity under a non-assistance cooperative agreement.

(d) Protection of Human Subjects Requirements: The Cooperator assures compliance with the following provisions regarding the rights and welfare of human subjects:

(1) The Cooperator is responsible for safeguarding the rights and welfare of any human subjects involved in research, development, and related activities supported by this Agreement. The Cooperator may conduct research involving human subjects only as prescribed in the statement of work and as approved by the Cooperator's Cognizant Institutional Review Board. Prior to conducting such research, the Cooperator shall obtain and document a legally sufficient informed consent from each human subject involved. No such informed consent shall include any exculpatory language through which the subject is made to waive, or to appear to waive, any of his or her legal rights, including any release of the Cooperator or its agents from liability for negligence.

(2) The Cooperator agrees to comply with U.S. Department of Health and Human Services' regulations regarding human subjects, appearing in 45 CFR part 46 (as amended).

(3) It will comply with REE policy, which is to assure that the risks do not outweigh either potential benefits to the subjects or the expected value of the knowledge sought.

(4) Selection of subject or groups of subjects shall be made without regard to sex, race, color, religion, or national origin unless these characteristics are factors to be studied.

(e) Animal Welfare Act Requirements: The Cooperator assures compliance with the Animal Welfare Act, as amended, 7 U.S.C. 2131, et seq., and the regulations promulgated thereunder by the Secretary of Agriculture (9 CFR, Subchapter A) pertaining to the care, handling, and treatment of warm-blooded animals held or used for research, teaching, or other activities supported by Federal funds. The

Cooperator may request registration of facilities and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the Region in which their facility is located. The location of the appropriate APHIS Regional Office, as well as information concerning this requirement, may be obtained by contacting the Senior Staff Officer, Animal Care Staff, USDA/APHIS, 4700 River Road, Riverdale, Maryland 20737.

(f) Recombinant DNA Research Requirements: The Cooperator assures that it will assume primary responsibility for implementing proper conduct on recombinant DNA research and it will comply with the National Institute of Health Guidelines for Recombinant DNA Research, as revised.

(1) If the Cooperator wishes to send or receive registered recombinant DNA material which is subject to quarantine laws, permits to transfer this material into the U.S. or across state lines may be obtained by contacting USDA/APHIS/PPQ, Scientific Services—Biotechnology Permits, 4700 River Road, Unit 133, Riverdale, Maryland 20737. In the event that the Cooperator has not established the necessary biosafety committee, a request for guidance or assistance may be made to the USDA Recombinant DNA Research Officer.

(2) [Reserved]

(g) Agriculture Bioterrorism Protection Act Requirements: The Cooperator assures compliance with the Agriculture Bioterrorism Protection Act of 2002, as implemented at 7 CFR part 331 and 9 CFR part 121, by agreeing that it will not possess, use, or transfer any select agent or toxin without a certificate of registration issued by the Agency.

**Subpart C—Management of Agreements****Financial Management****§ 550.19 Purpose.**

Sections 550.20 through 550.25 of this subpart prescribe standards for financial management systems and program management requirements.

**§ 550.20 Standards for financial management systems.**

(a) REE agencies shall require Cooperators to relate financial data to performance data.

(b) Cooperators' financial management systems shall provide for the following:

(1) Accurate, current, and complete disclosure of the financial results of

each REE sponsored project or program in accordance with the reporting requirements set forth in § 550.53 of this part. REE requires financial reporting on an accrual basis; however, the Cooperator shall not be required to establish an accrual accounting system. These Cooperators shall develop such accrual data through best estimate for their reports on the basis of an analysis of the documentation on hand.

(2) Records that identify the source and application of funds for federally sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Cooperators shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the Cooperator from the U.S. Treasury and the issuance or redemption of a check, warrant or payment by other means for program purposes by the Cooperator. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Rules and procedures for efficient Federal State funds transfer."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

**§ 550.21 Funding availability.**

The funding period will begin on the date of final signature, unless otherwise stated on the agreement, and continue for the project period specified on the cover page of the cooperative agreement.

**§ 550.22 Payment.**

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the U.S. Treasury and the issuance or redemption of a check, warrant, or payment by other means by the Cooperators. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) Reimbursement is the preferred method of payment. All payments to the Cooperator shall be made via EFT.

(1) When the reimbursement method is used, the REE Agency shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Cooperators shall be authorized to submit requests for payment not more than quarterly and not less frequently than annually.

(3) Content of Invoice.

At a minimum, the Cooperator's invoice shall state the following:

(i) The name and address of the Cooperator;

(ii) The name and address of the PI;

(iii) The name and address of the financial officer to whom payments shall be sent;

(iv) A reference to the cooperative agreement number;

(v) The invoice date;

(vi) The time period covered by the invoice; and

(vii) Total dollar amount itemized by budget categories (labor, direct costs, and indirect costs, etc.).

(4) To facilitate the EFT process, the Cooperator shall provide the following information:

(i) The name, addresses, and telephone number of the financial institution receiving payment;

(ii) The routing transit number of the financial institution receiving payment;

(iii) The account to which funds are to be deposited; and

(iv) The type of depositor account (checking or savings).

(c) If the REE Agency has determined that reimbursement is not feasible because the Cooperator lacks sufficient working capital, the REE Agency may provide cash on an advance basis provided the Cooperator maintains or demonstrates the willingness to maintain: Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the Cooperator, and financial management systems that meet the standards for fund control and accountability as established in § 550.20. Under this procedure, the REE Agency shall advance cash to the Cooperator to cover its estimated

disbursement needs for an initial period. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the Cooperator organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to the requirements of 31 CFR part 205.

(3) Requests for advance payment shall be submitted on SF-270, "Request for Advance or Reimbursement." This form is not to be used when advance payments are made to the Cooperator automatically through the use of a predetermined payment schedule or if precluded by special REE Agency instructions for electronic funds transfer.

(4) Cooperators shall maintain advances of Federal funds in interest bearing accounts, unless § 550.22(c)(4)(i), (ii), or (iii) applies.

(i) The Cooperator receives less than \$120,000 in Federal awards per year.

(ii) The best reasonably available interest bearing account would not be expected to earn interest in excess of \$250 per year on Federal cash balances.

(iii) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(5) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, Rockville, MD 20852. The Cooperator for administrative expense may retain interest amounts up to \$250 per year. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the REE Agency, it waives its right to recover the interest under CMIA. Thereafter, the REE Agency shall reimburse the Cooperator for its actual cash disbursements.

(6) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the REE Agency to the Cooperator. The working capital advance method of payment shall not be used for Cooperators unwilling or unable to provide timely advances to their

subrecipient to meet the subrecipient's actual cash disbursements.

(d) To the extent available, Cooperators shall disburse funds available from repayments to and interest earned on program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(e) Unless otherwise required by statute, REE Agencies shall not withhold payments for proper charges made by Cooperators at any time during the project period unless the conditions of paragraphs (e)(1) or (2) of this section apply.

(1) A Cooperator has failed to comply with the project objectives, the terms and conditions of the award, or REE reporting requirements.

(2) The Cooperator owes a debt to the United States which is subject to offset pursuant to 7 CFR part 3 and Federal Clause Collection Standard; 31 CFR parts 901 through 904.

(f) Standards governing the use of banks and other institutions as depositories of funds advanced or reimbursed under awards are as follows:

(1) Except for situations described in § 550.22(f)(2), REE Agencies shall not require separate depository accounts for funds provided to a Cooperator or establish any eligibility requirements for depositories for funds provided to a Cooperator. However, Cooperators must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

**§ 550.23 Program income.**

(a) REE Agencies shall apply the standards set forth in this section in requiring Cooperator organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in § 550.23(f), program income earned during the project period shall be retained by the Cooperator and shall be added to funds committed to the project by the REE Agency and Cooperator and used to further eligible project or program objectives.

(c) Cooperators shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(d) Costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(e) Proceeds from the sale of property shall be handled in accordance with the

requirements of the Property Standards (See §§ 550.36 through 550.42).

(f) Cooperators shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. Chapter 25) apply to inventions made under an experimental, developmental, or research award.

#### **§ 550.24 Non-Federal audits.**

(a) Cooperators and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, “Audits of States, Local Governments, and Non-Profit Organizations.”

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, “Audits of States, Local Governments, and Non-Profit Organizations.”

(c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A–133 shall be subject to the audit requirements of the REE agencies.

(d) Commercial organizations shall be subject to the audit requirements of the REE Agency or the prime recipient as incorporated into the award document.

#### **§ 550.25 Allowable costs.**

For each kind of Cooperator, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, “Cost Principles for State, Local, and Indian Tribal Governments” codified at 2 CFR part 225. The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, “Cost Principles for Non-Profit Organizations” codified at 2 CFR part 230. The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, “Cost Principles for Educational Institutions” codified at 2 CFR 220. The allowability

of costs incurred by hospitals is determined in accordance with the provisions of Subpart E of 45 CFR part 74. The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Appendix C to Circular A–122 (2 CFR part 230) is determined in accordance with the contract cost principles and procedures of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

#### **Program Management**

##### **§ 550.26 Monitoring program performance.**

(a) Cooperators are responsible for managing the day-to-day operations of REE nonassistance awards using their established controls and policies, as long as they are consistent with REE requirements. However, in order to fulfill their role in regard to the stewardship of Federal funds, REE Agencies monitor their agreements to identify potential problems and areas where technical assistance might be necessary. This active monitoring is accomplished through review of reports and correspondence from the cooperator, audit reports, site visits, and other information available to the REE Agency. It is the responsibility of the Cooperator to ensure that the project is being performed in compliance with the terms and conditions of the award.

(b) Monitoring of a project or activity will continue for as long as the REE Agency retains a financial interest in the project or activity. REE agencies reserve the right to monitor a project after it has been administratively closed out and no longer providing active support in order to resolve issues of accountability and other administrative requirements. Additional requirements regarding reporting and program performance can be found in §§ 550.51 through 550.55 of this part.

(c) The REE Agency reserves the right to perform site visits at Cooperator locations. Access to project or program records shall be provided in accordance with the provisions of § 550.55.

##### **§ 550.27 Prior approvals.**

(a) The budget is the financial expression of the project or program as approved during the award process. REE agencies require that all Federal costs be itemized on the approved budget. The budget shall be related to performance for program evaluation purposes.

(b) Cooperators are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions.

(c) Cooperators shall request prior approvals from REE Agencies for one or more of the following program or budget related reasons.

(1) Incur pre-award costs up to 90 days prior to award date. All pre-award costs are incurred at the Cooperator’s risk (i.e., the REE Agency is under no obligation to reimburse such costs if for any reason the Cooperator does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) Extensions of time, within statutory limitations, to complete project objectives. This extension may not be requested merely for the purpose of using unobligated balances. The Cooperator shall request the extension in writing with supporting reasons.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa.

(6) The inclusion of costs that require prior approval in accordance with OMB Circular A–21, “Cost Principles for Educational Institutions,” (2 CFR part 220), OMB Circular A–122, “Cost Principles for Non-Profit Organizations” (2 CFR part 230) or 45 CFR part 74 Appendix E, or 48 CFR part 31, “Contract Cost Principles and Procedures,” as applicable.

(7) Unless described in the agreement and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) When requesting approval for budget revisions, Cooperators shall use the budget form used in the cooperative agreement.

(e) Within 30 calendar days from the date of receipt of the request for budget revisions, the ADO shall review the request and notify the Cooperator whether the budget revisions have been approved.

##### **§ 550.28 Publications and acknowledgment of support.**

(a) *Publications.* REE Agencies and the Federal Government shall enjoy a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any materials developed in conjunction with a nonassistance cooperative agreement or contract under such an agreement.

(b)(1) Cooperators shall acknowledge ARS, Economics Research Service

(ERS), National Agricultural Statistics Service (NASS), and the Cooperative State Research, Education, and Extension Service (CSREES) support, whether cash or in-kind, in any publications written or published with Federal support and, if feasible, on any publication reporting the results of, or describing, a Federally supported activity as follows:

“This material is based upon work supported by the U.S. Department of Agriculture, \_\_\_ (insert Agency name) \_\_\_ under Agreement No. (Cooperator should enter the applicable agreement number here).”

(2) All such material must also contain the following disclaimer unless the publication is formally cleared by the awarding agency:

“Any opinions, findings, conclusion, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of the U.S. Department of Agriculture.”

(3) Any public or technical information related to work carried out under a non assistance cooperative agreement shall be submitted by the developing party to the other for advice and comment. Information released to the public shall describe the contributions of both parties to the work effort. In the event of a dispute, a separate publication may be made with effective statements of acknowledgment and disclaimer.

(c) *Media.* Cooperators shall acknowledge awarding Agency support, as indicated in § 550.28(b) above, in any form of media (print, DVD, audio production, etc.) produced with Federal support that has a direct production cost to the Cooperator of over \$5,000. Unless the terms of the Federal award provide otherwise, this requirement does not apply to:

(1) Media produced under mandatory or formula grants or under sub awards.

(2) Media produced as research instruments or for documenting experimentation or findings and intended for presentation or distribution to a USDA/REE audience.

#### § 550.29 Press releases.

Press releases or other forms of public notification will be submitted to the REE agency for review prior to release to the public. The REE Agency will be given the opportunity to review, in advance, all written press releases and any other written information to be released to the public by the Cooperator, and require changes as deemed necessary, if the material mentions by name the REE Agency or the USDA, or any USDA employee or research unit or location.

#### § 550.30 Advertising.

The Cooperator will not refer in any manner to the USDA or agencies thereof in connection with the use of the results of the project without prior specific written authorization by the awarding Agency. Information obtained as a result of the project will be made available to the public in printed or other forms by the awarding Agency at its discretion. The Cooperator will be given due credit for its cooperation in the project. Prior approval is required.

#### § 550.31 Questionnaires and survey plans.

The Cooperator is required to submit to the REE Agency copies of questionnaires and other forms for clearance in accordance with the Paperwork Reduction Act of 1980 and 5 CFR part 1320.

#### § 550.32 Project supervision and responsibilities.

(a) The Cooperator is responsible and accountable for the performance and conduct of all Cooperator employees assigned to the project. The REE Agency does not have authority to supervise Cooperator employees or engage in the employer employee relationship.

(b) The PI shall:

(1) Work jointly with the ADODR in the development of the project statement of work;

(2) Work jointly with the ADODR in the development of the project budget;

(3) Report, and obtain approval for, any change in the project budget;

(4) Report, and obtain approval for, any change in the scope or objectives of the project;

(5) Assure that technical project performance and financial status reports are submitted on a timely basis in accordance with the terms and conditions of the award;

(6) Advise the ADODR of any issues that may affect the timely completion of the project;

(7) Assure that the Cooperator meets its commitments under the terms and conditions of the non-assistance agreement;

(8) Assure that appropriate acknowledgements of support are included in all publications, in accordance with § 550.28 of this Part.

(9) Assure that inventions are appropriately reported in accordance with § 550.54 of this Part; and

(10) Upon request, provide the REE Agency with a project plan for use for external peer review.

#### § 550.33 Administrative supervision.

REE employees are prohibited from engaging in matters related to cooperator employer/employee relations

such as personnel, performance and time management issues. The cooperator is solely responsible for the administrative supervision of its employees.

#### § 550.34 Research misconduct.

(a) The Cooperator bears the primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation and adjudication of research misconduct alleged to have occurred in association with their own institution.

(b) The Cooperator shall:

(1) maintain procedures for responding to allegations or instances of research misconduct that has the following components:

(i) Objectivity;

(ii) Due process;

(iii) Whistle blower protection;

(iv) Confidentiality;

(v) Timely resolution;

(2) Promptly conduct an inquiry into any allegation of research misconduct;

(3) Conduct an investigation if an inquiry determines that the allegation or apparent instance of research misconduct has substance;

(4) Provide appropriate separation of responsibilities between those responsible for inquiry and investigation, and those responsible for adjudication;

(5) Advise REE Agency of outcome at end of inquiries and investigations into allegations or instances of research misconduct; and

(6) Upon request, provide the REE Agency, upon request, hard copy (or website address) of their policies and procedures related to research misconduct.

(c) Research misconduct or allegations of research misconduct shall be reported to the USDA Research Integrity Officer (RIO) and/or to the USDA, Office of Inspector General (OIG) Hotline.

(1) The USDA RIO can be reached at: USDA Research Integrity Officer, 214–W Whitten Building, Washington, DC 20250, Telephone: 202–720–5923, Email: [researchintegrity@usda.gov](mailto:researchintegrity@usda.gov).

(2) The USDA OIG Hotline can be reached on: 1–800–424–9121.

#### § 550.35 Rules of the workplace.

Cooperator employees, while engaged in work at the REE Agency's facilities, will abide by the Agency's standard operating procedures regarding the maintenance of laboratory notebooks, dissemination of information, equipment operation standards, hours of work, conduct, and other incidental matters stated in the rules and regulations of the Agency.

## Equipment/Property Standards

### § 550.36 Purpose of equipment/property standards.

Sections 550.37 through 550.42 of this part set forth uniform standards governing management and disposition of property furnished by the Federal Government or acquired by the Cooperator with funds provided by the Federal Government. The Cooperator may use its own property management standards and procedures provided it observes other applicable provisions of this Part.

### § 550.37 Title to equipment.

(a) As authorized by 7 U.S.C. 3318(d), title to expendable and nonexpendable equipment, supplies, and other tangible personal property purchased with Federal funding in connection with a non assistance cooperative agreement shall vest in the Cooperator from date of acquisition unless otherwise stated in the cooperative agreement.

(b) Notwithstanding any other provision of this rule the REE Agency may, at its discretion, retain title to equipment described in paragraph (a) of this section that is or may be purchased with Federal funds when the REE agency determines that it is in the best interest of the Federal Government.

### § 550.38 Equipment.

(a) The Cooperator shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(b) The Cooperator shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the REE Agency. When no longer needed for the original project or program, the Cooperator shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by the REE Agency which funded the original project, then

(2) Activities sponsored by other Federal awarding agencies.

(c) During the time that equipment is used on the project or program for which it was acquired, the Cooperator shall make it available for use on other projects or programs if such other use will not interfere with the work on the

project or program for which the equipment was originally acquired as may be determined by the REE Agency. First preference for such other use shall be given to other projects or programs sponsored by the REE Agency that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the REE Agency. User charges shall be treated as program income.

(d) When acquiring replacement equipment, unless otherwise directed by the REE Agency, the Cooperator shall use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the REE Agency.

(e) The Cooperator's property management standards for equipment acquired with Federal funds and federally owned equipment shall include all of the following.

(1) Equipment records shall be maintained accurately and shall include the following information:

- (i) A description of the equipment;
- (ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number;
- (iii) Source of the equipment, including the award number;
- (iv) Whether title vests in the Cooperator or the Federal Government;
- (v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost;
- (vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government);
- (vii) Location and condition of the equipment and the date the information was reported;
- (viii) Unit acquisition cost; and
- (ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a Cooperator compensates the REE Agency for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years and a copy provided to the ADO responsible for the agreement. Any differences between quantities determined by the physical inspection

and those shown in the accounting records shall be investigated to determine the causes of the difference. The Cooperator shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented. If the Federal Government owns the equipment, the Cooperator shall promptly notify the REE Agency.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the Cooperator is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(f) When the Cooperator no longer needs the equipment, the equipment shall be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of \$5,000 or more, the Cooperator may retain the equipment for other uses provided that compensation is made to the original REE Agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the Cooperator has no need for the equipment, the Cooperator shall request disposition instructions from the REE Agency. The REE Agency shall determine whether the equipment can be used to meet the Agency's requirements. If no requirement exists within that Agency, the availability of the equipment shall be reported to the General Services Administration (GSA) by the REE Agency to determine whether a requirement for the equipment exists in other Federal agencies. The REE Agency shall issue instructions to the Cooperator no later than 120 calendar days after the Cooperator's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Cooperator's request, the Cooperator shall sell the equipment and reimburse the REE Agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Cooperator shall be permitted to deduct and retain from the Federal share \$500 or ten percent of

the proceeds, whichever is less, for the Cooperator's selling and handling expenses.

(2) If the Cooperator is instructed to ship the equipment elsewhere, the Cooperator shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the Cooperator's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the Cooperator is instructed to otherwise dispose of the equipment, the Cooperator shall be reimbursed by the REE Agency for such costs incurred in its disposition.

(4) The REE Agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the Cooperator in writing.

(ii) The REE Agency shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with federal funds and federally owned equipment. If the REE Agency fails to issue disposition instructions within the 120 calendar days, the Cooperator shall apply the standards of this section, as appropriate.

(iii) When the REE Agency exercises its right to take title, the equipment shall be subject to the provisions for federally owned equipment.

#### **§ 550.39 Equipment replacement insurance.**

If required by the terms and conditions of the award, the Cooperator shall provide adequate insurance coverage for replacement of equipment acquired with Federal funds in the event of loss or damage to such equipment.

#### **§ 550.40 Supplies and other expendable property.**

(a) Title to supplies and other expendable property shall vest in the Cooperator upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the Cooperator shall retain the supplies for use on non-Federal sponsored

activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The Cooperator shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

#### **§ 550.41 Federally-owned property.**

(a) Title to federally-owned property remains vested in the Federal Government. Cooperators shall submit annually an inventory listing of federally-owned property in their custody to the REE Agency. Upon completion of the award or when the property is no longer needed, the Cooperator shall report the property to the REE Agency for further Federal Agency utilization.

(b) If the REE Agency has no further need for the property, it shall be declared excess and reported to the GSA, unless the REE Agency has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (i)) to donate research equipment to educational and non-profit organizations in accordance with Executive Order 12999, "Education technology: ensuring Opportunity for all children in the next century." Appropriate instructions shall be issued to the Cooperator by the REE Agency.

#### **§ 550.42 Intangible property.**

(a) The Cooperator may copyright any work that is subject to copyright and was developed, by the Cooperator, or jointly by the Federal Government and the Cooperator, or for which ownership was purchased, under a cooperative agreement. REE Agencies reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so for Federal purposes.

(b) Cooperators are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(c) The REE Agency has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under a cooperative agreement; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a cooperative agreement that were used by the Federal Government in developing an Agency action that has the force and effect of law, the REE Agency shall request, and the Cooperator shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the REE Agency obtains the research data solely in response to a FOIA request, the Agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the Agency, the Cooperator, and applicable subrecipients. This fee is in addition to any fees the Agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of paragraph (d) of this section:

(i) Research data is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). Research data also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) Published is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal;

(B) A Federal Agency publicly and officially cites the research findings in support of an Agency action that has the force and effect of law; or

(C) Used by the Federal Government in developing an Agency action that has the force and effect of law is defined as when an Agency publicly and officially cites the research findings in support of an Agency action that has the force and effect of law.

(e) All rights, title, and interest in any Subject Invention made solely by employee(s) of the REE Agency shall be owned by the REE Agency. All rights, title, and interest in any Subject Invention made solely by at least one (1) employee of the REE Agency and at least one (1) employee of the Cooperator shall be jointly owned by the Agency and the Cooperator, subject to the provisions of 37 CFR part 401.

(f) REE Agencies shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

### Procurement Standards

#### § 550.43 Purpose of procurement standards.

Sections 44 through 50 set forth standards for use by Cooperators in establishing procedures for the procurement of supplies and other expendable property, equipment and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Federal awarding agencies upon Cooperators, unless specifically required by Federal statute or executive order or approved by OMB.

#### § 550.44 Cooperator responsibilities.

The standards contained in this section do not relieve the Cooperator of the contractual responsibilities arising under its contract(s). The Cooperator is the responsible authority, without recourse to the REE Agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of a nonassistance agreement. This includes disputes, claims, award protests, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority, as may have proper jurisdiction.

#### § 550.45 Standards of conduct.

The Cooperator shall maintain written standards of conduct governing the

performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the Cooperator shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, Cooperators may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Cooperator.

#### § 550.46 Competition.

(a) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The Cooperator shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the Cooperator, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offer shall fulfill in order for the bid or offer to be evaluated by the Cooperator. Any and all bids or offers may be rejected when it is in the Cooperator's interest to do so.

(b) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain

parties are restricted by agencies' implementation of Executive Orders 12549 and 12689, "Debarment and Suspension."

(c) Recipients shall, on request, make available for the REE Agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

#### § 550.47 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

#### § 550.48 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

- (a) Basis for contractor selection;
- (b) Justification for lack of competition when competitive bids or offers are not obtained; and
- (c) Basis for award cost or price.

#### § 550.49 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely followup of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

#### § 550.50 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the simplified acquisition threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the simplified acquisition threshold shall contain suitable provisions for termination by the cooperator, including the manner by which termination shall

be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) All negotiated contracts (except those for less than the simplified acquisition threshold) awarded by recipients shall include a provision to the effect that the recipient, the REE Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(d) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A, 2 CFR part 215, as applicable.

## Reports and Records

### § 550.51 Purpose of reports and records.

Sections 550.52 through 550.55 set forth the procedures for monitoring and reporting on the Cooperator's financial and program performance and the necessary reporting format. They also set forth record retention requirements, and property and equipment inventory reporting requirements.

### § 550.52 Reporting program performance.

(a) The REE Agency shall prescribe the frequency with which performance reports shall be submitted. Performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The REE Agency may require annual reports before the anniversary dates of multiple year agreements in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the period of agreement.

(b) When required, performance reports shall contain, for each award, detailed information on each of the following.

(1) A comparison of actual accomplishments with the goals and objectives established for the period and the findings of the investigator. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data

should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(c) Cooperators shall not be required to submit more than the original and two copies of performance reports.

(d) Cooperators shall immediately notify the REE Agency of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

### § 550.53 Financial reporting.

Financial Status Report.

(a) Each REE Agency shall require Cooperators to report the status of funds as approved in the budget for the cooperative agreement. A financial status report shall consist of the following information:

(1) The name and address of the Cooperator.

(2) The name and address of the PI.

(3) The name, address, and signature of the financial officer submitting the report.

(4) A reference to the cooperative agreement.

(5) Period covered by the report.

(6) An itemization of actual dollar amounts expended on the project during the reporting period (in line with the approved budget) and cumulative totals expended for each budget category from the starting date of the cooperative agreement.

(b) The REE Agency shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(c) The REE Agency shall require Cooperators to submit the financial status report (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the REE Agency upon request of the Cooperator.

### § 550.54 Invention disclosure and utilization reporting.

(a) The Cooperator shall report Invention Disclosures and Utilization information electronically via i-Edison Web Interface at: [www.iedison.gov](http://www.iedison.gov).

(b) If access to InterAgency Edison is unavailable, the invention disclosure should be sent directly to: Division of Extramural Intentions and Technology Resources, 6705 Rockledge Drive, (RKL 1), Suite 310, MSC 7980, Bethesda, Maryland 20892-7750.

### § 550.55 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to Cooperators. REE agencies shall not impose any other record retention or access requirements upon Cooperators, excepting as set out in § 550.42(d).

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of 3 years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the REE Agency. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken;

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition;

(3) When records are transferred to or maintained by the REE Agency, the 3-year retention requirement is not applicable to the Cooperator;

(4) Indirect cost rate proposals, cost allocations plans, etc., as specified in paragraph (f) of this section.

(c) Copies of original records may be substituted for the original records if authorized by the REE Agency.

(d) The REE Agency shall request transfer of certain records to its custody from Cooperators when it determines that the records possess long-term retention value. However, in order to avoid duplicate record keeping, a REE Agency may make arrangements for Cooperators to retain any records that are continuously needed for joint use.

(e) The REE Agency, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access

to any books, documents, papers, or other records of Cooperators that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a Cooperator's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) No Cooperator shall disclose its records that are pertinent to an award until the Cooperator provides notice of the intended disclosure with copies of the relevant records to the REE Agency.

(g) *Indirect cost rate proposals, cost allocations plans, etc.* Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage charge back rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the Cooperator submits to the REE Agency or the subrecipient submits to the Cooperator the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation.* If the Cooperator is not required to submit to the REE Agency or the subrecipient is not required to submit to the Cooperator the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

#### **Suspension, Termination, and Enforcement**

##### **§ 550.56 Purpose of suspension, termination, and enforcement.**

Sections § 550.57 and § 550.58 of this part set forth uniform suspension, termination, and enforcement procedures.

##### **§ 550.57 Suspension and termination.**

Awards may be suspended or terminated in whole or in part if paragraphs (a), (b), or (c) of this section apply.

(a) The REE Agency may terminate the award, if a Cooperator materially fails to comply with the provisions of

this rule or the terms and conditions of an award.

(b) The REE Agency with the consent of the Cooperator, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(c) If costs are allowed under an award, the responsibilities of the Cooperator referred to in § 550.32, including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the Cooperator after termination, as appropriate.

##### **§ 550.58 Enforcement.**

(a) Remedies for noncompliance. If a Cooperator materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the REE Agency may, in addition to imposing any of the special conditions outlined in § 550.10, take one or more of the following actions.

(1) Temporarily withhold cash payments pending correction of the deficiency by the Cooperator or more severe enforcement action by the REE Agency.

(2) Disallow all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) Effects of suspension and termination. Costs of a Cooperator resulting from obligations incurred by the Cooperator during a suspension or after termination of an award are not allowable unless the REE Agency expressly authorizes them in the notice of suspension or termination or thereafter. Other Cooperator costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if paragraphs (b)(1) and (2) of this section apply.

(1) The costs result from obligations which were properly incurred by the Cooperator before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are non-cancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(3) Relationship to debarment and suspension. The enforcement remedies

identified in this section, including suspension and termination, do not preclude a Cooperator from being subject to debarment and suspension under Executive Orders 12549 and 12689 and USDA implementing regulations (7 CFR part 3017).

#### **Subpart D—Close Out**

##### **§ 550.59 Purpose.**

Sections 550.60 through 550.62 of this part contain closeout procedures and other procedures for subsequent disallowances and adjustments.

##### **§ 550.60 Closeout procedures.**

(a) Cooperators shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The REE Agency may approve extensions to the reporting period when requested by the Cooperator.

(b) Unless the REE Agency authorizes an extension, a Cooperator shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in Agency implementing instructions.

(c) The REE Agency shall make prompt payments to a Cooperator for allowable reimbursable costs under the award being closed out.

(d) The Cooperator shall promptly refund any balance of unobligated cash advanced or paid by the REE Agency that it is not authorized to retain for use in other projects. OMB Circular A-129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the REE Agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The Cooperator shall account for any personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 550.36 through 550.42.

(g) In the event a final audit has not been performed prior to the closeout of an award, the REE Agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

##### **§ 550.61 Subsequent adjustments and continuing responsibilities.**

The closeout of an award does not affect any of the following:

(a) The right of the REE Agency to disallow costs and recover funds on the basis of a later audit or other review.

(b) The obligation of the Cooperator to return any funds due as a result of later refunds, corrections, or other transactions.

(c) Audit requirements in § 550.24.

(d) Property management requirements in §§ 550.36 through 550.42.

(e) Records retention as required in § 550.56.

#### **§ 550.62 Collection of amounts due.**

(a) Any funds paid to a Cooperator in excess of the amount to which the Cooperator is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the REE Agency may in accordance with 7 CFR part 3, reduce the debt by—

(1) Making an administrative offset against other requests for reimbursements, or

(2) Withholding advance payments otherwise due to the Cooperator, or

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the REE Agency shall charge interest on an overdue debt in accordance with 31 CFR part 900, "Federal Claims Collection Standards."

#### **Gale A. Buchanan,**

*Chief Scientist, USDA, Under Secretary, Research, Education, and Economics.*

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**BILLING CODE 3410-03-P**

## **DEPARTMENT OF AGRICULTURE**

### **Rural Business-Cooperative Service**

#### **7 CFR Parts 1951 and 4274**

**RIN: 0570-AA70**

#### **Intermediary Relending Program**

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** The Rural Business-Cooperative Service (RBS) amends its regulations for the Intermediary Relending Program (IRP). This action is needed to address several contradictions between the servicing and processing regulations. The intended effect of this action is to incorporate consistent language in both regulations as it relates to loan limits for ultimate recipients, eligible vs. ineligible uses of funds, and include a requirement on the extent to

which ultimate recipients are assisted by the loans made. The changes will result in eliminating inconsistencies within the regulations and provide clarity and guidance that will allow the program to operate more efficiently and effectively.

**DATES:** This direct final rule is effective November 3, 2008, unless USDA Rural Development receives written adverse comments or written notice of intent to submit adverse comments on or before October 20, 2008. If USDA Rural Development receives such comments or notice, USDA Rural Development will publish a timely document in the **Federal Register** withdrawing the direct final rule.

**ADDRESSES:** You may submit adverse comments or notice of intent to submit adverse comments to this rule by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250-0742.

- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at 300 7th Street, SW., 7th Floor address listed above.

**FOR FURTHER INFORMATION CONTACT:** Lori A. Washington, Loan Specialist, Specialty Lenders Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3225, 1400 Independence Ave., SW., Washington, DC 20250-3225, Telephone (202) 720-9815, E-mail [lori.washington@wdc.usda.gov](mailto:lori.washington@wdc.usda.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Classification**

This rule has been determined to be not significant for purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

##### **Programs Affected**

The Catalog of Federal Domestic Assistance number for the program impacted by this action is 10.767, Intermediary Relending Program.

## **Intergovernmental Review**

The IRP is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. USDA Rural Development has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940-J, "Intergovernmental Review of Rural Development Programs and Activities," and in 7 CFR part 3015, subpart V.

## **Civil Justice Reform**

This direct final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted, (2) no retroactive effect will be given this rule, and (3) administrative proceedings in accordance with the regulations of the Agency at 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

## **Environmental Impact Statement**

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." USDA Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

## **Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, USDA Rural Development must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector of \$100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of UMRA generally requires USDA Rural Development to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory