

**§ 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 in-

stances 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.