§ 35.6710 Records access.

(a) Recipient requirements. The recipient must comply with the requirements regarding records access described in 40 CFR 31.42(e).

(b) Availability of records. The recipient must, with the exception of certain policy, deliberative, and enforcement documents which may be held confidential, ensure that all files are available to the public.

(c) Contractor requirements. The recipient must require its contractor to comply with the requirements regarding records access described in 40 CFR 31.36(i)(10).

OTHER ADMINISTRATIVE REQUIREMENTS FOR COOPERATIVE AGREEMENTS

§ 35.6750 Modifications.

The recipient must comply with the requirements regarding changes to the Cooperative Agreement described in 40 CFR 31.30.

§ 35.6755 Monitoring program performance.

The recipient must comply with the requirements regarding program performance monitoring described in 40 CFR 31.40(a) and (e).

§ 35.6760 Enforcement and termination for convenience.

The recipient must comply with all terms and conditions in the Cooperative Agreement, and is subject to the requirements regarding enforcement of the terms of an award and termination for convenience described in 40 CFR 31.43 and 31.44.

§ 35.6765 Non-Federal audit.

The recipient must comply with the requirements regarding non-Federal audits described in 40 CFR 31.26.

§ 35.6770 Disputes.

The recipient must comply with the requirements regarding dispute resolution procedures described in 40 CFR 31.70.

§ 35.6775 Exclusion of third-party benefits.

The Cooperative Agreement benefits only the signatories to the Cooperative Agreement.

§ 35.6780 Closeout.

(a) Closeout of a Cooperative Agreement, or an activity under a Cooperative Agreement, can take place in the following situations:

(1) After the completion of all work for a response activity at a site; or 

(2) After all activities under a Cooperative Agreement have been completed; or

(3) Upon termination of the Cooperative Agreement.

(b) The recipient must comply with the closeout requirements described in 40 CFR 31.50 and 31.51.

(c) After closeout, EPA may monitor the recipients’ compliance with the assurance to provide all future operation and maintenance as required by CERCLA section 104(c) and addressed in 40 CFR 300.510(c)(1) of the NCP.

§ 35.6785 Collection of amounts due.

The recipient must comply with the requirements described in 40 CFR 31.52, regarding collection of amounts due.

§ 35.6790 High risk recipients.

If EPA determines that a recipient is not responsible, EPA may impose restrictions on the award as described in 40 CFR 31.12.

REQUIREMENTS FOR ADMINISTERING A SUPERFUND STATE CONTRACT (SSC)

§ 35.6800 Superfund State Contract.

A Superfund State Contract (SSC) with a State is required before EPA can obligate or expend funds for a remedial action at a site within the State and before EPA or a political subdivision can conduct the remedial action. An SSC also ensures State or Indian Tribe involvement consistent with CERCLA sections 121(f) and 126, respectively, and obtains the required section 104 assurances (See §35.6105(b)). An SSC may also be used to document the roles and responsibilities of a State, Indian Tribe, and political subdivision during any response action at
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§ 35.6805 Contents of an SSC.

The SSC must include the following provisions:

(a) General authorities, which document the relevant statutes and regulations (of each government entity that is a party to the contract) governing the contract.

(b) Purpose of the SSC, which describes the response activities to be conducted and the benefits to be derived.

(c) Negation of agency relationship between the signatories, which states that no signatory of the SSC can represent or act on behalf of any other signatory in any matter associated with the SSC.

(d) A site description, pursuant to § 35.6105(a)(2)(i).

(e) A site-specific Statement of Work, pursuant to §35.6105(a)(2)(ii) and a statement of whether the contract constitutes an initial SSC or an amendment to an existing contract.

(f) A statement of intention to follow EPA policy and guidance.

(g) A project schedule to be prepared during response activities.

(h) A statement designating a primary contact for each party to the contract, which designates representatives to act on behalf of each signatory in the implementation of the contract. This statement must document the authority of each project manager to approve modifications to the project so long as such changes are within the scope of the contract and do not significantly impact the SSC.

(i) The CERCLA assurances, as appropriate, described as follows:

(1) Operation and maintenance. The State must provide an assurance pursuant to §35.6105(b)(1). The State’s responsibility for operation and maintenance generally begins when EPA determines that the remedy is operational and functional or one year after construction completion, whichever is sooner (See, 40 CFR 300.435(f)).

(2) Twenty-year waste capacity. The State must provide an assurance pursuant to §35.6105(b)(3).

(3) Off-site storage, treatment, or disposal. If off-site storage, destruction, treatment, or disposal is required, the State must provide an assurance pursuant to §35.6105(b)(4); the political subdivision may not provide this assurance.

(4) Real property acquisition. When real property must be acquired, the State must provide an assurance pursuant to §35.6105(b)(5).

(5) Provision of State cost share. The State must provide assurances for cost sharing pursuant to §35.6105(b)(2). Even if the political subdivision is providing the actual cost share, the State must guarantee payment of the cost share in the event of default by the political subdivision.

(j) Cost share conditions, which include:

(1) An estimate of the response action cost (excluding EPA’s indirect costs) that requires cost share;

(2) The basis for arriving at this figure (See §35.6285(c) for credit provisions); and

(3) The payment schedule as negotiated by the signatories, and consistent with either a lump-sum or incremental-payment option. Upon completion of activities in the site-specific Statement of Work, EPA shall invoice the State for its final payment, with the exception of any change orders and claims handled during reconciliation of the SSC.

(k) Reconciliation provision, which states that the SSC remains in effect until the financial settlement of project costs and final reconciliation of response costs (including all change orders, claims, overmatch of cost share, reimbursements, etc.) ensures that both EPA and the State have satisfied the cost share requirement contained in section 104 of CERCLA, as amended. The recipient may direct EPA to return the overmatch or to use the excess cost share payment at one site to meet the cost share obligation at another site in accordance with §35.6285(d). Reimbursements for any overmatch will be made to the recipient identified in the SSC.

(l) Amendability of the SSC, which provides that:

(1) Formal amendments are required when alterations to CERCLA-funded activities are necessary or when alterations impact the State’s assurances