

§ 230.40

36 CFR Ch. II (7–1–07 Edition)

than that established by the authorizing statute;

(2) Describe any limitations for cost-share of management plans;

(3) Define what constitutes a management plan if a State chooses to adopt more restrictive requirements than those established in this subpart; and

(4) Identify aggregate payment limitations to any one landowner receiving cost-share funds through FLEP.

(e) The State priority plan must also describe how funds identified for cost-share with landowners will be distributed and how cost-share rates are determined and established for each practice.

(f) The State priority plan must describe the application and payment process for landowners interested in participating in and receiving cost-share through FLEP (§ 230.42).

(g) The State priority plan must also address the following steps related to financial assistance:

- (1) Application procedure;
- (2) Approval process;
- (3) Performance period;
- (4) Cancellation of approvals;
- (5) Certification of performance;
- (6) Payment;
- (7) Maintenance and compliance;
- (8) Procedure for recapture of funds for non-compliance; and
- (9) Appeals procedures.

§ 230.40 Eligible practices for cost-share assistance.

(a) The State priority plan must document and describe which of the following eleven categories will be made available to landowners for cost-share funding:

(1) *Management Plan Development*—Development or revision of a management plan that must meet the minimum standards of a Forest Stewardship Plan (16 U.S.C. 2103a(f)(i)). The plan applies to those portions of the landowner's property on which any practice or activity funded under FLEP shall be carried out, as well as any property of the owner that may be affected by the activity or practice. Management plans are not subject to any acreage limits, and therefore cost-sharing such a plan under FLEP is exempt from the 1,000-acre (or 5,000-acre) limit

unless restricted as described in the State priority plan.

(2) *Afforestation and Reforestation*—Site preparation, planting, seeding, or other practices to encourage natural regeneration or to ensure forest establishment and carbon sequestration.

(3) *Forest Stand Improvement*—Practices to enhance growth and quality of wood fiber, special forest products, and carbon sequestration.

(4) *Agroforestry Implementation*—Establishment, maintenance, and renovation of windbreaks, riparian forest buffers, silvopasture, alley cropping, or other agroforestry practices, including purposes for energy conservation and carbon sequestration in conjunction with agriculture, forest, and other land uses.

(5) *Water Quality Improvement and Watershed Protection*—Establishment, maintenance, renovation, and restoration practices, including any necessary design and engineering to improve and protect water quality, riparian areas, and forest wetlands and watersheds.

(6) *Fish and Wildlife Habitat Improvement*—Establishment, maintenance, and restoration practices to create, protect, or improve fish and wildlife habitat, including any necessary design and engineering.

(7) *Forest Health and Protection*—Establishment of practices primarily to detect, monitor, assess, protect, improve, or restore forest health, including detection and control of insects, diseases, and animal damage to established stands.

(8) *Invasive Species Control*—Establishment, maintenance and restoration practices primarily to detect, monitor, eradicate, or control the spread of invasive species.

(9) *Wildfire and Catastrophic Risk Reduction*—Establishment of practices primarily to reduce the risk from wildfire and other catastrophic natural events.

(10) *Wildfire and Catastrophic Event Rehabilitation*—Establishment of practices primarily to restore and rehabilitate forests following wildfire and other catastrophic natural events.

(11) *Special Practices*—Establishment, maintenance, and restoration practices addressing other conservation concerns on nonindustrial private forest lands as

Forest Service, USDA

proposed by the State Forester and the Committee, which must have concurrence by the responsible official.

(b) A practice may consist of one or more components.

§ 230.41 Eligibility requirements for cost-share assistance.

(a) All landowners of nonindustrial private forest land as defined in § 230.31 of this subpart, including those who engage in primary processing of raw wood products on a part-time or intermittent basis and who otherwise meet the requirements of this section, are eligible to apply for and receive assistance under FLEP without regard to race, color, religion, national origin, age, sex, disability, political affiliation, sexual orientation, or marital or family status.

(b) A landowner is eligible to receive funds under the cost-share element of FLEP for treatment of not more than a total of 1,000 acres of land annually, except where a State Forester, with the concurrence of a responsible official, determines that significant public benefits would accrue from approval of a landowner's treating up to 5,000 acres annually. In making a determination of significant public benefits, the State Forester and the responsible official shall consider, at a minimum, whether landowners who treat more than 1,000 acres annually can achieve cost-effective resource management objectives without unduly excluding FLEP participation of other eligible landowners.

(c) In order to meet the following minimum requirements to be eligible to receive cost-share through FLEP for all practices except development of a management plan, a landowner must:

(1) Own the minimum acreage as established in the State priority plan; however, in no case shall the minimum acreage requirement be higher than 25 acres;

(2) Agree to conduct land treatment(s) according to the landowner's practice plan and to maintain FLEP practices for a minimum of 10 years, unless the State Forester specifies a shorter duration. The 10-year lifespan does not apply to recurring practices such as prescribed burning, light disking in openings, herbicide application, and other practices that are iden-

§ 230.42

tified as needed in the management plan and practice plan; and

(3) Have a management plan submitted to the State Forester in which the lands are located that meets any requirements established by the State in its priority plan. Existing landowner management plans such as Tree Farm management plans, Forest Stewardship management plans, or similar plans may either meet, or can be amended to meet this requirement.

(d) A leaseholder who has a long-term lease on the land to be treated through FLEP must provide a copy of the lease to the State Forester in order to be eligible to receive cost-share assistance.

§ 230.42 Cost-share assistance application and payment procedures.

(a) Landowner applications for cost-share payments shall not be approved unless cost-share funds are available. The obligation of funds upon approval of an application constitutes an agreement by the State and the landowner to cost-share a completed practice on a reimbursable basis when the service representative verifies that the practice has been implemented.

(b) Upon receiving an application for an eligible FLEP practice and making a determination that funds are available, a service representative shall prepare a practice plan that identifies the needed practices, specifications, and performance period for the implementation of the practice(s) to achieve the objectives of the landowner. The requirements of a practice plan may be contained in a management plan. The practice plan is the basis for determining acceptable performance upon completion of the practice.

(c) Upon approval of a FLEP application, the State Forester shall notify the landowner in writing. Such notice shall state that the landowner can begin implementing the approved practice(s) and that funds have been obligated for reimbursement of a specified amount of the total cost. Practice costs incurred before approval are not eligible unless authorized by the State Forester. The notice shall also state that payment shall be made upon the service representative's verification