

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-

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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

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that the practice has been implemented in accordance with the specifications of the practice plan and activities described in the management plan.

(d) Any landowner who carries out practices under FLEP shall be responsible for obtaining the authorities, rights, easements, or other approvals necessary to the performance and maintenance of the practices in keeping with applicable laws and regulations.

(e) To be eligible for cost-share reimbursement payment, a landowner must complete each practice within the performance period specified in the State priority plan, not to exceed 24 months. However, if practice(s) are not completed within the performance period specified, due to conditions beyond the landowner's control, the State Forester may grant an extension for a time period specified in the State priority plan, not to exceed 12 months.

(f) Upon certification by the service representative that a practice has been completed in accordance with the practice plan, the cost-share payment shall be calculated and disbursed to the landowner. Landowners must provide to service representatives the right of access to the landowner's property to inspect practices for the duration of the maintenance period for the practices.

(g) The maximum aggregate amount of cost-share payment under FLEP to any one landowner shall not exceed \$100,000 through 2007, with the following exception for Alaska Indian Tribes. The Alaska State Forester, in consultation with the State Forest Stewardship Coordinating Committee and the Responsible Official, shall establish the maximum aggregate payment to any one Alaska Indian Tribe, however, the 1,000- and 5,000-acre limits shall apply.

(h) The State priority plan shall set the levels of cost-share assistance to be paid to landowners, not to exceed 75 percent of the total costs incurred by a participating landowner. Non-Federal program funds and other donated assistance may be used to supplement cost-share through FLEP; however, the total of all funds and assistance shall not exceed 100 percent of the total cost

of practice implementation, and the Federal share of the total cost shall be reduced by any gross revenue from any material sold as a result of the cost-share practice.

(i) States may use the cost-share rate to define priority practices and priority areas by reserving the maximum rate of 75 percent of the total costs for the practices and areas having the highest priority.

(j) State priorities for cost-share shall reflect the national priorities as listed in the Forest Service Manual Chapter 3310.

(k) Other priorities may be developed by the State Forester in consultation with the State Forest Stewardship Coordinating Committee.

(l) A landowner may receive partial payment, if allowed in the State priority plan, for completed components on the condition that the landowner agrees to complete the remaining components of the practice within the performance period specified in the practice plan.

(m) Where performance actually rendered does not meet the minimum specifications of a practice due to factors beyond the landowner's control, the State Forester may approve cost-share payments under one of the following conditions:

(1) The landowner repeats application of practices previously implemented or establishes additional eligible practices under such terms and conditions as the service representative may require, in which case the State Forester may approve cost-share payments for additional or repeated practices to the extent such measures are needed to meet the objectives of the management plan; or

(2) The landowner establishes, to the satisfaction of the service representative that:

(i) A reasonable effort was made to meet the minimum requirements; and

(ii) The practice, as performed, adequately meets the objectives of the practice plan.

(n) In case of death or incompetence of any landowner, the State Forester shall approve cost-share payments to the successor in title or other persons or entities in control of the landowner property if they agree to maintain the

practices for the duration of the required maintenance period.

(o) Any landowner who may be entitled to a cost-share payment under this subpart may assign the right thereto, in whole or in part, under the following terms:

(1) Payments may be assigned only for performance of a FLEP practice;

(2) A payment that is made to a landowner may not be assigned to pay or secure any preexisting debt; and

(3) Nothing in this section shall be construed to authorize suit against the United States, the Department of Agriculture, the Forest Service, any State or any disbursing agent acting on their behalf, if payment is made to an assignor rather than to an assignee or if payment is made to only one of several assignees.

(p) No financial assistance or portion thereof due and owing to any landowner shall be subject to any claim arising under State or other law by any creditor, except for claims of agencies of the United States Government.

(q) Prior to receiving approval to implement any FLEP practice identified in the State priority plan, except for management plan development, eligible landowners shall have an approved practice plan providing appropriate technical standards concerning the performance of the requested practice(s). A service representative shall approve the plan. In reviewing and approving plans, to the extent deemed applicable by the service representative, 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, the practice plan requirements under FLEP.

§ 230.43 Cost-share assistance—prohibited practices.

(a) Cost-share payments for the following are prohibited:

(1) Costs incurred before an application for cost-share is approved in writing, except:

(i) As pre-approved by the State Forester, or

(ii) The materials and items that may be purchased before approval of the practice as described in the State priority plan;

(2) Repeated practices on the same site within the required maintenance period which have been implemented under any other Federal, State, or local government programs, or private sector programs, except where such practices are repeated due to a failure of a prior practice without fault of the landowner or recurring practices as noted in this subpart;

(3) Capital investments or capital improvements not related to FLEP practices, purchase of land or any interest in land, or any interest in an endowment as provided in section 230.32(k) and (l);

(4) Practices associated with the development of or improvement to landowner nursery operations;

(5) Practices associated with the development of or improvement to nut and fruit orchards or Christmas tree plantings or maintenance; or

(6) Any practice that is not related to the long-term sustainability of non-industrial private forest lands or agroforestry activities.

§ 230.44 Cost-share assistance—reporting requirement.

(a) FLEP cost-share accomplishments should be reported using the following standard categories of practices:

(1) FLEP1—Management Plan Development;

(2) FLEP2—Afforestation and Reforestation;

(3) FLEP3—Forest Stand Improvement;

(4) FLEP4—Agroforestry Implementation;

(5) FLEP5—Water Quality Improvement and Watershed Protection;

(6) FLEP6—Fish and Wildlife Habitat Improvement;

(7) FLEP7—Forest Health and Protection;

(8) FLEP8—Invasive Species Control;

(9) FLEP9—Fire and Catastrophic Risk Reduction;

(10) FLEP10—Fire and Catastrophic Event Rehabilitation; and

(11) FLEP11—Special Practices.

(b) All reporting must include activities and accomplishments for each category of FLEP practices.