

§ 230.8

(8) Wildlife Habitat Enhancement (SIP8), which includes the establishment and enhancement of permanent habitat for game and nongame wildlife species.

(9) Forest Recreation Enhancement (SIP9), which includes the enhancement of outdoor recreation activities and aesthetics.

(b) In the application and use of pesticides, including biological, chemical, and behavioral substances, practice performance shall meet all label requirements, State and Federal regulations, and local ordinances.

(c) Anyone who carries out practices under this Program 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.

§ 230.8 Application and approval.

(a) A landowner wishing to participate in the Program shall contact the local office of the State Forester who shall provide information necessary to make application.

(b) The State Forester, or such official as the State Forester may designate, shall make basic eligibility determinations, including whether the applicant meets nonindustrial private forest land ownership criteria and minimum and maximum acreage criteria in accordance with § 230.5 of this subpart, and approve Program practices. The landowner shall be notified of such determination in writing by mail.

(c) The State Forester, or such official as the State Forester may designate, shall approve Program practices based on the following:

(1) For approval of practices described in § 230.7(a)(2)–(a)(9) of this subpart, verification that the landowner has an approved landowner forest stewardship plan.

(2) A determination whether the practice is needed and feasible.

(3) A determination that the practice is consistent with funding priorities established by the State Forester.

(d) Applications shall not be approved unless cost-share funds are available. Approval of an application shall constitute an agreement by the

36 CFR Ch. II (7–1–07 Edition)

United States and the landowner to cost-share approved practices upon acceptable performance.

(e) Upon approval of Program practices, a Service Representative shall prepare a project outline that identifies the needed technical practices, specifications, and approximate time frame(s) for the implementation of the practice(s) to achieve the objectives of the landowner forest stewardship plan. Upon agreement by the landowner and the Service Representative to the requirements set forth in the project outline, the outline shall be attached to and become part of the landowner forest stewardship plan and shall be effective for the duration of the practice. Requirements of a project outline shall constitute the basis for determining acceptable performance upon practice completion.

(f) Upon approval of Program practices, the landowner shall be notified of approved practices in writing. Such notice shall state that the landowner can begin implementing approved practices.

§ 230.9 Payment to landowners.

(a) To be eligible for cost-share payments, a landowner must complete each practice within eighteen months of approval. However, if practice(s) are not completed in eighteen months due to conditions beyond the landowner's control, a six month extension period may be granted by the Service Representative.

(b) Upon certification by the Service Representative that a practice has been completed in accordance with specifications, the federal cost-share payment will be calculated and disbursed to the landowner. Service Representatives shall have the right of access to the landowner's property to inspect practices for the duration of the practice maintenance period.

(c) The amount of payment under the Program to any one landowner shall not exceed \$10,000 in any given fiscal year. For each landowner participating in the Program, the payment limitation shall apply as follows:

(1) Where husband and wife hold joint ownership, they shall be considered as a single landowner.

(2) Where any number of individuals hold common ownership, they shall be considered as a single landowner.

(3) Where the individual is a partner, corporate shareholder, or has an ownership interest in another private legal entity, the amount of payment to the individual shall be equivalent to the percentage of ownership the individual holds in such partnership, corporation or other private legal entity times the payment made to such partnership, corporation or other legal entity.

(d) Levels of federal cost-share funds to be paid to landowners shall be set by the State Forester, but shall not exceed 75 percent of the actual costs incurred by a participating landowner. Non-Federal program funds and other donated assistance may be used to supplement cost-share assistance under the Program; however, the total of all funds and assistance shall not exceed 100 percent of the actual cost of practice implementation.

(e) A practice may consist of one or more component activities. A landowner may receive partial payment for completed components on the condition that the landowner agrees to complete the remaining component(s) of the practice within the time period specified by the Service Representative, not to exceed eighteen months following approval to implement the practice, unless an extension is justified as provided in paragraph (a) of this section.

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

(1) The landowner repeats applications of components previously implemented or establishes additional eligible components under such terms and conditions as the Service Representative may require, in which case, the State Forester shall approve additional cost-sharing for additional or repeated components to the extent such measures are needed to meet the objectives of the landowner forest stewardship 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 landowner forest stewardship plan.

(g) Where the landowner has received cost-share assistance for site preparation and the establishment of trees has been unsuccessful due to factors beyond the landowner's control, the Service Representative shall require that trees be re-established and shall approve cost-share assistance for such activity.

(h) If a landowner sells, conveys, or otherwise loses control of lands upon which there is a continuing obligation to maintain a practice and the new landowner does not agree to assume the responsibility for maintaining the practice, the landowner who was originally obligated to maintain the practice shall be liable to reimburse the United States for all cost-share payments on such practices.

(i) In case of death or incompetency of any landowner, the State Forester shall approve cost-share payments to the successor if the successor agrees to maintain the practices for the duration of the required maintenance period.

(j) Any landowner who may be entitled to any 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 Program practice.

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

(3) Neither the United States, the Forest Service, the Secretary of Agriculture, nor any disbursing agent shall be liable in any suit if payment is made to an assignor rather than to an assignee, and nothing in this section shall be construed to authorize any suit against the United States, the Forest Service, the Secretary or any disbursing agent if payment is not made to the assignee, or if payment is made to only one of several assignees.

(k) No cost-share payment or portion thereof due and owing any landowner shall be subject to any claim arising

§ 230.10

under State law by any creditor, except agencies of the United States Government.

§ 230.10 Prohibitions.

(a) No cost-share funds shall be paid for the following:

(1) Costs incurred before an application for cost-share assistance is approved;

(2) The implementation of any practice(s) already required by law, regulation, or other authority; and

(3) Repairs or normal upkeep or maintenance of any practice.

(b) No cost-share assistance shall be paid for repeating practices on the same site by the same landowner which have been implemented under the Forestry Incentives Program (16 U.S.C. 2104) or 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.

§ 230.11 Recapture of payment.

(a) If any landowner, successor, or assignee uses any scheme or device to unjustly benefit from this program, the cost-share funds shall be withheld or a refund of all or part of any Program payments otherwise due or paid that person shall be secured. A scheme or device includes, but is not limited to, coercion, fraud or misrepresentation, false claims, or any business dissolution, reorganization, revival, or other legal mechanism designed for or having the effect of evading the requirements of this subpart.

(b) If any landowner or successor takes any action or fails to take action which results in the destruction or impairment of a prescribed practice for the duration of the practice, cost-share funds shall be withheld or a recapture of all or part of any Program payments otherwise due or paid shall be secured based on the extent and effect of destruction and impairment.

(c) Nothing in this section requiring the withholding or refunding of cost-share funds shall preclude any penalty or liability otherwise imposed by law.

36 CFR Ch. II (7-1-07 Edition)

§ 230.12 Reconsideration.

Any landowner, successor, or assignee who is dissatisfied with any determination made under the Program may request reconsideration by the State Forester and, if the matter is still not resolved, by the Regional Forester. All requests for reconsideration shall be in writing and shall contain factual information explaining the basis for requesting reconsideration. All decisions upon reconsideration shall be issued in writing.

§ 230.13 Information requirements.

The requirements governing the preparation of a State forest stewardship plan in §230.4(d) of this subpart, the landowner forest stewardship plan in §230.6 of this subpart, and the application requirements of §230.8 constitute information requirements as defined by the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and have been approved for use pursuant to 5 CFR part 1320 and assigned OMB Control Number 0596-0120.

Subpart B—Urban and Community Forestry Assistance Program

SOURCE: 65 FR 57549, Sept. 25, 2000, unless otherwise noted.

§ 230.20 Scope and authority.

The Urban and Community Forestry Assistance Program is authorized by Section 9 of the Cooperative Forestry Assistance Act of 1978, as amended (16 U.S.C. 2105). The scope of this authority includes the provision of technical, financial, and related assistance to State and local governments, non-profits, and other members of the public to: maintain, expand, and preserve forest and tree cover; expand research and education efforts related to trees and forest cover; enhance technical skills and understanding of tree maintenance and practices involving cultivation of trees, shrubs and complementary ground covers; and implementing a tree planting program to complement urban tree maintenance and open space programs. The Secretary has delegated the authority for implementing the program to the Chief of the Forest Service under 7 CFR 2.60(a)(16).