

River from miles 355.5 to 356.5, extending the entire width of the river.

(c) *Periods of enforcement.* This section will be enforced from 10 a.m. to 7 p.m. on July 19 and July 20, 2003. The Captain of the Port Huntington or a designated representative will inform the public through broadcast notice to mariners of the enforcement periods for the safety zone.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry of persons and vessels into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Huntington or a designated representative.

(2) Participating vessels are authorized entry within the zone.

(3) Persons or vessels other than participating vessels and mariners requiring entry into or passage through the zone must request permission from the Captain of the Port Huntington or a designated representative. They may be contacted via VHF-FM Channel 13 or 16 or by telephone at (304) 529-5524.

(4) All persons and vessels shall comply with the instructions of the Captain of the Port Huntington and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: May 14, 2003.

S.M. Wischmann,

*Lieutenant Commander, U.S. Coast Guard,
Acting Captain of the Port Huntington.*

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

36 CFR Part 230, Subpart C

RIN 0596-AB95

Forest Land Enhancement Program

AGENCY: Forest Service, USDA.

ACTION: Interim final rule; request for comment.

SUMMARY: The Department is adopting an interim final rule to establish a new subpart C in part 230 of Title 36 Code of the Federal Regulations that sets forth procedures for administration of the new Forest Land Enhancement Program (FLEP), which was authorized in the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill). The intended effect of this interim final rule is to encourage the long-term sustainability of nonindustrial private

forest (NIPF) lands in the United States by assisting landowners, through State foresters, in more actively managing their forest lands and related resources through the use of State, Federal, and private sector resource management expertise, financial assistance, and educational programs. Public comment is invited and will be considered in the development of the final rule. The Forest Service specifically invites public comment on the process for distributing FLEP funds, including the national allocation factors.

DATES: This interim final rule is effective June 9, 2003. Comments must be received by August 8, 2003.

ADDRESSES: Send written comments to Hal E. Brockman, USDA Forest Service, Cooperative Forestry, Mail Stop Code 1123, 1400 Independence Avenue, SW., Washington, DC 20250-1123; via electronic mail to hbrockman@fs.fed.us; or via facsimile to FLEP Rule Comments at (202) 205-1271. The agency cannot confirm receipt of comments. A toll free number is available, 1-866-585-8540, for callers to record voice mail messages (up to 3 minutes long) with their comments on the interim final rule. This toll free number will be active 24 hours a day during the comment period. Public comments submitted by voice mail will be transcribed for the public record.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received on this interim final rule during regular business hours at the office of the Cooperative Forestry Staff, 4th Floor SE., Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead to (202) 205-1389 to facilitate entry into the building.

A copy of the Farm Security and Rural Investment Act of 2002, secs. 8001 and 8002, which established the Forest Land Enhancement Program, and other information on this program can be found at <http://www.fs.fed.us/spf/coop/flep.htm>.

FOR FURTHER INFORMATION CONTACT: Hal Brockman, Forest Service, Cooperative Forestry, (202) 205-1694.

SUPPLEMENTARY INFORMATION:

Background

Through the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill), which amended the Cooperative Forestry Assistance Act (16 U.S.C. 2101, *et seq.*), Congress established the Forest Land Enhancement Program (hereafter, FLEP). In establishing this program, Congress recognized the public benefits

of sustainable forest management to enhance the productivity of timber, fish and wildlife habitat, soil and water quality, wetlands, recreational resources, and aesthetic values; and the need to establish a coordinated and cooperative Federal, State, and local sustainable forestry program for the establishment, management, maintenance, enhancement, and restoration of forests on nonindustrial private forest land. To accomplish this purpose, Congress has authorized the use of \$100 million dollars of Commodity Credit Corporation funds to implement FLEP through September 30, 2007. These FLEP funds are available for use by all 50 United States, Puerto Rico, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands (CNMI), and American Samoa.

The Stewardship Incentive Program (SIP), managed by the USDA Forest Service (Forest Service), and the Forestry Incentives Program (FIP), managed by the Natural Resource Conservation Service, were repealed in the 2002 Farm Bill. SIP was initiated in the 1990 Farm Bill and allowed for cost-sharing a wide range of multiple resource management practices. FIP was initiated in 1975 and allowed for cost-sharing timber stand improvement, site preparation for natural regeneration and tree planting practices. The regulation for SIP at 36 CFR part 230, subpart A, will be removed at a later date but is currently needed for administration of SIP until the remaining funds have been expended.

FLEP will continue with the work that has been completed by SIP and FIP and include the options of providing technical and educational assistance. FLEP encompasses all of the cost-share practices authorized under both SIP and FIP. Since 1975, through FIP there has been almost 4 million acres of trees planted, about 1.5 million acres of improving a stand of forest trees, and about 51,000 acres of site preparation for natural regeneration. Since 1990, through SIP there has been almost 4.5 million acres of a variety of practices completed by more than 45,000 participants. These practices include cost-share for the development of forest stewardship plans on more than 2 million acres for almost 11,000 participants. The primary practices undertaken with SIP funds other than plan development, in order of acres completed are: Forest improvement; reforestation and afforestation; wildlife habitat enhancement; soil and water protection and improvement; agroforestry establishment, maintenance or renovation; riparian and wetland

protection and improvement; forest recreation enhancement; and fisheries habitat enhancement.

FLEP is intended to promote sustainable forest management on nonindustrial private forest land and to complement other sustainable forestry programs in the States. FLEP establishes or supplements existing nonindustrial private forest land programs to provide technical, educational, and financial assistance to landowners. The implementation of this new program demonstrates the commitment of the Secretary of Agriculture to sustainable forest management.

FLEP will be administered by the Chief of the Forest Service through the Responsible Officials, in partnership with State forestry agencies. The State Foresters will develop and carry out FLEP in collaboration with their State Forest Stewardship Coordinating Committees, based on the authorizing legislation, this interim final rule, and the State's priority plan.

For reasons of simplicity and efficiency, the distribution of funds from the Chief is based on factors and criteria applied to three geographic areas of the United States: Northeast, South, and West. The Northeast distribution area includes the Forest Service State and Private Forestry Northeastern Area, which comprises the 20 States in Region 9. The Southern distribution area includes the 13 States in Forest Service Region 8, and the International Institute for Tropical Forestry in Puerto Rico, and the U.S. Virgin Islands. The Western distribution area includes the 17 States in Forest Service Regions 1, 2, 3, 4, 5, 6, and 10; and the Territories of Guam, CNMI, and American Samoa. In accordance with section 230.32 of this interim final rule, the Responsible Officials in the three geographic fund distribution areas will use the criteria set out in the Forest Service Directives Manual Chapter 3310 to make the final allocation to each State. The State will be responsible for reimbursing individuals and third parties. A general description of the criteria is provided in the section-by-section explanation for section 230.32.

The Forest Service has received input from several Federal and State agencies, numerous conservation organizations, institutions of higher learning, and individuals relative to the development of program policy, activities, elements, and procedures for FLEP. These include Forest Service field units, the Cooperative State Research Education and Extension Service, the Farm Service Agency, and the Natural Resources Conservation Service within the U.S. Department of Agriculture; State

forestry agencies; the International Association of Fish and Wildlife agencies; Indian Tribes; and others.

Section-by-Section Explanation of the Interim Final Rule at 36 CFR Part 230, Subpart C (New)

Section 230.30—Purpose and scope. Paragraphs (a) and (b) of this section discuss the purpose and scope of FLEP which is to provide a coordinated and cooperative Federal, State, and local sustainable forestry program for the establishment, management, maintenance, enhancement, and restoration of forests on nonindustrial private forest land. Paragraph (b) explains that the components of FLEP complement existing Federal or State programs, along with programs offered by institutions of higher learning.

Paragraph (c) explains that participation in FLEP is voluntary. However, in order to participate, each State must have nonindustrial private forest lands, a State Forester or equivalent, and a State Forest Stewardship Coordinating Committee.

Section 230.31—Definitions. This section sets out definitions for the following terms as they are used in FLEP: Capital investment or improvement, Catastrophic natural event, Chief, Committee, Concurrence, Cost-Share, Financial assistance, Fiscal year, Landowner, Management plan, Nonindustrial private forest land, Practice, Practice plan, Responsible Official, Service representative, State, State Forester, and State priority plan. The following definitions have not been used in previous programs: Capital investment or improvement, Catastrophic natural event, Concurrence, Cost-share, Financial assistance, Management plan, Practice plan, Responsible Official, Service representative and State priority plan. These definitions are a result of some of the differences between FLEP and previous program.

Section 230.32—National program administration. This section outlines how FLEP is administered at the National level and how FLEP funds will be distributed from the National level to the State level. The Chief will implement FLEP in partnership with State forestry agencies and in consultation with a wide range of Federal, State, and local natural resource agencies, and institutions of higher learning and with a broad range of private sector interests. The Chief, working with the State Foresters, will develop and oversee FLEP policy and monitor implementation over the life of the program.

The Chief will distribute the funds to each of the three geographic funding areas. This shall be based on the national allocation factors, which are set out in the Forest Service Manual Chapter 3310. A notice of issuance of an interim directive has been published elsewhere in this part of today's **Federal Register**. Forest Service Directives are available electronically at <http://www.fs.fed.us/im/directives>. The Responsible Official determines the allocation amount for each State.

Allocation factors to the three geographic areas are determined in consultation with the State Foresters who serve on the Forest Resource Management Committee. The Forest Resource Management Committee is a standing committee of the National Association of State Foresters, comprised of nine State Foresters, three from each of the three geographic funding areas. Current criteria used at the National level for determining funds distribution to the three geographic areas for FY 2003 are:

- (1) Acres of NIPF lands,
- (2) Number of NIPF landowners that own 1 acre or more,
- (3) 10% of the acres of highly erodible lands,
- (4) Number of owners of those highly erodible lands, and
- (5) Acres of land with a growing capacity greater than 20 cubic feet per year.

The data for these factors are currently available for all States. The Forest Service is gathering data on factors that relate to the priorities for NIPF lands to use in the allocation of funds to the three geographic regions in FY 2004. The additional factors planned for FY 2004 are: areas at risk from forest health concerns for insect and disease; areas at risk from wildfire; loss and fragmentation of the forest land base; and miles of impaired streams, rivers and coastal shoreline along with acres of impaired lake, estuary and wetland areas.

The Responsible Officials in each of the three geographic funding areas shall coordinate with their respective State Foresters to determine the final allocation to each State based on the: National priorities, National allocation factors, regional and State-wide priorities, ability of the State to deliver FLEP as shown in past progress reporting for other Cooperative Forestry programs, and agency direction in the Forest Service Manual Chapter 3310. The national priorities will change with changes in public demand for the uses of forestlands and with the increase in scientific knowledge. As these national priorities change, the Forest Service

Manual Chapter 3310 will be changed. For substantive changes, a notice may be published in the **Federal Register**. Changes in the national priorities will also be available on the Forest Service Web site provided in the **ADDRESSES** section of this preamble.

Section 230.33—Responsible Official program administration. This section outlines how FLEP is administered at the Forest Service Responsible Official level.

Section 230.34—State program administration. This section outlines how FLEP is administered at the State level.

Section 230.35—FLEP elements. There are three major elements of FLEP: education, technical assistance, and financial assistance. States may use a portion of the funds received through FLEP for administrative costs. There are no limits on what portion of FLEP funds may be used for administration. States are not required to participate in all elements of FLEP.

Section 230.36—State priority plan—purpose and scope. State priority plans are a new requirement for FLEP. States should use all existing data and plans, such as the State Forest Stewardship plan, to help create this plan. There are no transitional issues expected from the development of the State priority plan.

Section 230.37—State priority plan—educational assistance. This section addresses the educational assistance component of FLEP in a State priority plan.

Section 230.38—State priority plan—technical assistance. This section addresses the technical assistance component of FLEP in a State priority plan. If a State determines that all or some of its funds will be used for technical assistance, the State priority plan must describe who will provide the assistance, outreach efforts directed at specific groups or categories of landowners, expected long- and short-term outcomes, and method(s) for documenting accomplishments.

Section 230.39—State priority plan—financial assistance. This section addresses the administration of FLEP cost-share financial assistance in the State priority plan.

Section 230.40—Eligible practices for cost-share assistance. Paragraphs (a)(1) through (11) of this section authorize 11 activities and practices for which cost-share funds may be made available to landowners, including: management plan development; afforestation and reforestation; forest stand improvement; agroforestry implementation; water quality improvement and watershed protection; fish and wildlife habitat improvement; forest health and

protection; invasive species control; wildfire and catastrophic risk reduction; wildfire and catastrophic event rehabilitation; and special practices (establishment, maintenance, and restoration practices addressing other conservation concerns as proposed by the State Forester and the committee and must have concurrence by the Responsible Official). States may develop policy handbooks to provide further direction regarding these practices and to provide specifications for practice implementation. A practice may consist of one or more components.

Section 230.41—Eligibility requirements for cost-share assistance. All owners of nonindustrial private forest land as defined in section 230.31 of this subpart are eligible to apply directly to the State for cost-share assistance. FLEP funds may be used for the treatment of up to 1,000 acres annually per landowner, and up to 5,000 acres with a waiver by the State Forester and concurrence by the Responsible Official. Although the average size of forest holdings differs considerably among the geographic regions for the country, the majority of nonindustrial private forest landowners own less than 100 acres. The maximum acreage limitation of 1,000 acres therefore adequately allows for broad program participation. The State Forester and Responsible Official will base the approval of treatment of between 1,000 and 5,000 acres on the assessment of significant public benefit. States can use their FLEP funds for treatment of more than 1,000 acres, up to 5,000 acres. The agreement for all FLEP activities is between the State and the landowner.

To be eligible for FLEP, landowners must meet the minimum acreage requirement determined by the State and set out in the State priority plan, which may not exceed 25 acres. The 25-acre maximum limitation ensures that landowners of small properties will be eligible for participation in FLEP. Management plan requirements must be explained in the State priority plan, including minimum requirements. These minimum requirements should include elements such as a map of the property, soils information, and analysis of the current situation of the land and its resources and recommendations for future activities. States will have to determine if existing landowner management plans such as Tree Farm management plans, Forest Stewardship plans, or similar plans meet their current minimum criteria for a management plan.

Section 230.42—Cost-share assistance application and payment procedures.

This section describes the cost-share assistance and payment procedures for FLEP. Some of the key points about this process are as follows. Cost-share funds must be available before landowners may make an application for payment. The approval of an application constitutes an agreement between the landowner and the State. The landowner is obligated to complete the practice(s) on a reimbursable basis. When the service representative verifies that the practice has been completed, the landowner shall be reimbursed for the agreed to cost-share amount. Every cost-share practice must have a practice plan approved by the service representative. The requirements of the practice plan may be contained in the management plan and serve as the basis for determining acceptable performance.

Landowners shall be notified in writing upon approval of a FLEP application. The landowner is responsible for obtaining all authorities, rights, easements, or other approvals necessary to the performance and maintenance of the practices in keeping with applicable laws and regulations.

Practices must be completed within 24 months of approval. If a longer period of time is needed, the State Forester may grant an extension, not to exceed 12 months, if this is specified in the State priority plan. The cost-share payment shall be calculated and disbursed to the landowner upon certification of the practice. Landowners must provide access for practice inspection to the service representative.

The maximum aggregate amount of cost-share payment under FLEP shall not exceed \$100,000 through 2007, with the exception of Alaska Indian Tribes. The Alaska State Forester, in consultation with the State Forest Stewardship Coordinating Committee and the Responsible Official, determines their limit.

Cost-share payments may not exceed 75 percent of the total cost incurred by the participating landowner. Landowners may utilize non-federal programs or any donated assistance to supplement FLEP funds but the total of all funds shall not exceed 100 percent of the cost of implementing the practice. If the practice results in the immediate sale of forest products, the Federal share of the total cost shall be reduced by the gross revenue.

States may use the cost-share rates as a means to define priorities practices or priority areas. State priorities for cost share shall reflect the national priorities as listed in the Forest Service Manual Chapter 3310. The State Forester may develop other priorities in consultation

with the State Forest Stewardship Coordinating Committee.

When a practice fails to meet the minimum specifications due to factors beyond the landowner's control, the State Forester may approve cost-share payments under the following conditions. (1) The landowner repeats the application or establishes additional eligible practices. (2) The landowner establishes a reasonable effort to meet the minimum requirements and the practice as performed adequately meets the objectives of the practice plan. In the case of death or incompetence of any landowner, the State Forester shall approve cost-share payment to the successor in title or other persons or entities in control of the property, if they agree to maintain the practice for the duration of the required maintenance period.

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 behalf of the State. Claims of agencies of the United States Government are the only ones allowed against any payments to any landowner.

A landowner must have a management plan prior to receiving approval to implement any FLEP practice, except for management plan development. A service representative must approve the plan.

Section 230.43—Cost-share assistance—prohibited practices. This section identifies the cost-share activities that are prohibited in FLEP. These activities include items such as costs incurred before an application is approved and repeated practices. The State Forester has the authority to pre-approve costs incurred prior to an approved application. The State priority plan can describe materials and items that may be purchased before an application is approved. Repeating practices implemented with other Federal, State, or local government programs are prohibited, except where such practices are repeated due to failure of a prior practice without fault of the landowner. Recurring practices as noted in this subpart may be repeated.

Practices that are prohibited include capital investments or capital improvements that are not related to a FLEP practice, such as purchase of land or any interest in land, or any interest in an endowment as provided in 230.32. Also prohibited is the development of or improvement to landowner nursery operations, development of or improvement to nut and fruit orchards or Christmas tree plantings or maintenance, or any practice that is not

related to the long-term sustainability of nonindustrial private forest lands or agroforestry practices.

Section 230.44—Cost-share assistance—reporting requirement. There are 11 categories for reporting FLEP cost-share practices. They will be reported annually through the Forest Service automated data system. Most categories will be reported in acres treated. FLEP1 will include number of plans developed as well as acres planned. States will only report those categories for which they provide cost-share. Each State shall report these practices to the Responsible Official who will collect a report for their States and provide this information to the Forest Service Washington Office Cooperative Forestry Staff.

Section 230.45—Recapture of cost-share assistance. This section authorizes the recapture of payments to landowners under a range of circumstances including: the use of this program to procure unjust benefits; the action or failure to take action by the landowner or successor that results in the deliberate destruction or impairment of a practice; or the landowners sale, conveyance, or other loss of control of land before the required practice maintenance period has ended and the new landowner does not agree to maintain the practice for the duration of the practice maintenance period.

Section 230.46—Information collection requirements. This section provides the Office of Management and Budget control number assigned to the information collection requirements governing the preparation of a State priority plan, a management plan, practice plan, reporting requirements, and the application requirements of this subpart, as required by the Paperwork Reduction Act of 1995. Notice of this new information collection was published in the **Federal Register** with a request for comment on September 20, 2002 (67 FR 59246). No comments were received. This has been assigned Office of Management and Budget (OMB) control number 0596-0168.

Good Cause Statement

By adoption of this interim final rule, FLEP will be implemented in accordance with the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill). This interim final rule ensures consistent and proper use of funds by the agency as well as the State forestry agencies and associated third parties. This rule is being published as an interim final rule to allow for prompt implementation of FLEP. Agency directives providing further guidance on administration of FLEP are issued in

Forest Service Directive Manual Chapter 3310. The 2002 Farm Bill repealed the two existing programs, Stewardship Incentive Program (SIP) and Forestry Incentive Program (FIP), which provided assistance to nonindustrial forest land owners. Administration of SIP and FIP will continue on a limited basis only until remaining funds from these programs have been expended. Prompt implementation of FLEP is important to ensure there is no gap in financial assistance to qualified landowners due to the repeal of SIP and FIP. The comments received on this interim final rule during the 60-day comment period following publication in the **Federal Register**, along with experience from the first year of FLEP implementation, will be used to develop a final rule. This interim final rule has also received review by a wide variety of partners and interested parties.

Regulatory Certifications

Regulatory Impact

This interim final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. An analysis has been conducted addressing the costs and benefits associated with promulgating this interim final rule to implement the FLEP authorized by 16 U. S. C. 2101 *et seq.*, as amended (Pub. L. 107-171).

The Forestry Incentives Program (FIP) and the Stewardship Incentives Program (SIP) were both repealed in the 2002 Farm Bill. These programs assisted private forest landowners in managing forestland for multiple benefits. In FY 2002, these two programs were allocated \$10 million. Between 1996 and 2002, FIP funding averaged \$6.3 million. SIP was allocated \$4.5 million in 1997 and 1998, and no Federal funds in 1999, 2000, and 2001. FLEP is authorized to receive up to \$100 million through FY 2007.

The primary economic effects of the interim final regulations are an increase in forest health and sustainability due to better management practices on NIPF land, as well as non-monetized benefits such as improved water quality, wildlife habitat, fishing opportunities, carbon sequestration, and enhanced recreation. The costs of the interim final regulation to the Federal treasury will be \$100 million over 5 years, as specified in the legislation, or, more than \$87 million when discounted at 7% discount rate. The discounted increase in Federal expenditures is estimated at \$43 million. The States will administer the program using a portion of these funds. Costs to individual landowners are

voluntary, and consist of at least 25% of the portion of the funds spent on cost sharing. In this analysis, we estimate these costs will increase \$6.4 million above the baseline.

Benefits of the interim final regulation above the baseline include cost sharing to improve forest management on more than 382,000 acres. Technical assistance on sustainable forest practices will be provided to more than 2.9 million acres of forestland to improve landowner awareness and understanding of sustainable forestry principles and practices. Qualitative benefits include additional carbon sequestration, improved wildlife habitat, improved soil and water quality, and sustainable forest conditions.

It has been determined that FLEP will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State or local communities. A maximum total of \$100 million will be provided to State Forestry agencies between 2003 and 2007, as directed in the Farm Security and Rural Investment Act of 2002, (Pub. L. 107-171; 16 U.S.C. 2101 *et seq.*). These funds will be used to pay for the technical, education, and financial assistance to nonindustrial private forest landowners to improve the sustainability of these lands and the forest resources. FLEP will complement other Federal, State, and local programs that provide assistance to landowners by making greater resources available to participants.

Finally, as a new program, FLEP would not materially alter the budgetary impact of entitlements, user fees, loan programs, or the rights and obligations of their recipients. The program is completely voluntary for each State and is voluntary for any landowner. Those States that choose to implement FLEP must follow requirements in this interim final rule, as would landowners participating in the program.

The Office of Management and Budget (OMB) has designated this interim final rule as significant due to the potential that it may raise novel legal or policy issues. Therefore, this interim final rule is subject to OMB review under Executive Order 12866.

Controlling Paperwork Burdens to the Public

The Office of Management and Budget has reviewed the final information collection package for this rulemaking according to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing

regulations at 5 CFR part 1320. The information requirements in this rule have been assigned OMB control number 0596-0168 for use through May 31, 2006. The requirements governing the preparation of a State priority plan, management plan, practice plan, the reporting requirements, and the application requirements of this subpart constitute the minimum information requirements needed to administer FLEP.

Government Paper Work Elimination Act Compliance

The Forest Service is committed to compliance with the Government Paper Work Elimination Act, which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Civil Rights Impact Analysis

A Civil Rights Impact Analysis has been completed and reviewed by USDA. The analysis is available for viewing on the Forest Service FLEP Web site: <http://www.fs.fed.us/spf/coop/flep.htm>.

Civil Justice Reform

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Department has not identified any State or local laws or regulations that are in conflict with this regulation or that would impede full implementation of this interim final rule. Nevertheless, in the event that such a conflict was to be identified, the interim final rule would preempt the State or local laws or regulations found to be in conflict. However, in that case, (1) no retroactive effect would be given to this interim final rule; and (2) the Department would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Energy Effects

This interim final rule has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this interim final rule does not constitute a significant energy action as defined in the Executive order. Procedural in nature, this interim final rule guides the development of practices to be applied on nonindustrial private forest lands including practices for energy conservation.

Environmental Impact

This interim final rule deals with the implementation of the FLEP, and as such, has no direct effect on Forest Service decisions for land management activities. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43168; September 18, 1992) excludes from documentation in an environmental assessment or impact statement rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instruction. The Department's assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or an environmental impact statement.

Takings Implications

This interim final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of Constitutionally protected private property. This interim final rule is limited to establishment of an administrative program within the Forest Service to assist nonindustrial private landowners in the management and conservation of timber and non-timber resources. This interim final rule and the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171), which authorizes FLEP, do not permit any takings of private property or provide any funds for such purpose.

Consultation and Coordination With Indian Tribal Governments

This interim final rule does not have tribal implications as defined in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and, therefore, advance consultation with tribes is not required. However, a draft of the interim final rule was shared with tribes to collect their input for the development of this interim final rule.

Federalism

The Department has considered this interim final rule under the requirements of Executive Order 13132, Federalism, and Executive Order 12875, Government Partnerships. The Department has made a preliminary assessment that the interim final rule conforms with the federalism principles set out in these Executive Orders; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the National government and the States, or on the

distribution of power and responsibilities among the various levels of government. Moreover, there is no requirement on States to match funds in order to participate in FLEP. Based on comments received on this interim final rule, the Department will consider if any additional consultation will be needed with State and local governments prior to adopting a final rule.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 through 1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this interim final rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of \$100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Proper Consideration of Small Entities

This interim final rule has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial assessment on small entities' flexibility has been prepared as part of the cost-benefit analysis and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by SBREFA. This interim final rule imposes no additional requirements on the affected public. The principal small businesses expected to be impacted are consultant foresters who may assist State forestry agencies in different phases of FLEP delivery, including technical, educational, and cost-share elements for which they will be fully compensated. The minimum requirements on small entities imposed by this interim final rule are necessary to protect the public interest, are not administratively burdensome or costly to meet, and are well within the capability of small entities to perform.

List of Subjects in 36 CFR Part 230

Forest and forest products, Grant programs—natural resources, Intergovernmental relations, Reporting and recordkeeping requirements.

■ Therefore, for the reasons set forth in the preamble, part 230 of Title 36 of the Code of Federal Regulations is amended by adding a new subpart C as follows:

PART 230—STATE AND PRIVATE FORESTRY ASSISTANCE

■ 1. The authority citation is revised to read as follows:

Authority: 16 U.S.C. 2101 *et seq.*

■ 2. Amend Part 230 by adding a new subpart C to read as follows:

Subpart C—Forest Land Enhancement Program

Sec.

- 230.30 Purpose and scope.
- 230.31 Definitions.
- 230.32 National program administration.
- 230.33 Responsible official program administration.
- 230.34 State program administration.
- 230.35 FLEP elements.
- 230.36 State priority plan—purpose and scope.
- 230.37 State priority plan—educational assistance component.
- 230.38 State priority plan—technical assistance.
- 230.39 State priority plan—financial assistance component.
- 230.40 Eligible practices for cost-share assistance.
- 230.41 Eligibility requirements for cost-share assistance.
- 230.42 Cost-share assistance—application and payment procedures.
- 230.43 Cost-share assistance—prohibited practices.
- 230.44 Cost-share assistance—reporting requirement.
- 230.45 Recapture of cost-share assistance.
- 230.46 Information collection requirements.

§ 230.30 Purpose and scope.

(a) The regulations in this subpart govern the operation of the Forest Land Enhancement Program (hereafter, FLEP) as provided in Section 4 of the Cooperative Forestry Assistance Act (16 U.S.C. 2101 *et seq.*), as amended by title VIII of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171). The purpose of FLEP is to provide a coordinated and cooperative Federal, State, and local sustainable forestry program for the establishment, management, maintenance, enhancement, and restoration of forests on nonindustrial private forest land.

(b) The educational assistance, resource management expertise, and financial assistance provided under FLEP shall complement any existing Federal or State programs or programs offered through institutions of higher learning providing assistance to nonindustrial private forest landowners. FLEP promotes improved coordination and cooperation among Federal, State, and local programs regarding the establishment, maintenance, enhancement, and restoration of nonindustrial private forestlands.

(c) Participation in FLEP is voluntary on the part of both the State and the nonindustrial forest landowner. To participate, each State must have nonindustrial private forest lands, a State Forester or equivalent, and a State Forest Stewardship Coordinating Committee.

§ 230.31 Definitions.

The terms used in this subpart are defined as follows:

Capital investment or improvement. Durable equipment or assets capable of being amortized or depreciated over a period of 3 or more years, not including activities or practices carried out as part of the Forest Land Enhancement Program (FLEP) cost-share element.

Catastrophic natural event. Destructive natural event, which includes, but is not limited to, wildfires, insect infestations, disease outbreaks, droughts, floods, windstorms, freezing, ice storms, hail, sleet, mudslides, landslides, earthquakes, avalanches, tornadoes, volcanoes, hurricanes, or tsunamis.

Chief. The Chief of the Forest Service, United States Department of Agriculture.

Committee. The State Forest Stewardship Coordinating Committee.

Concurrence. Review, verification, and confirmation by the Responsible Official that the State priority plan contains all of the key elements required by law and the rules of this subpart.

Cost-share. A program payment, on a reimbursable basis, at a maximum of 75 percent of the cost incurred by a landowner for implementation of a State-approved activity or practice authorized under FLEP.

Financial assistance. Funds disbursed as an award by the Federal Government to an eligible party from the FLEP annual apportionment, in the form of money, including grants, agreements, contracts, and other arrangements.

Fiscal year. The accounting period, used by the United States Government, from October 1 through September 30.

Landowner. An individual, group, association, corporation, Indian Tribe, or other legal private entity owning nonindustrial private forest land or a person who receives concurrence from the landowner for practice implementation and who holds a lease on the land for a minimum of 10 years. Corporations whose stocks are publicly traded or owners principally engaged in the primary processing of raw wood products are excluded.

Management plan. A written plan prepared by a service representative and approved by a State Forester.

Nonindustrial private forest land. Rural lands with existing tree cover, or which are suitable for growing trees, that are owned by any landowner as defined in this section.

Practice. A prescribed, natural resource management activity that is consistent with a practice plan and implemented through FLEP to enhance the multiple resource values and benefits and that results in improved conditions on nonindustrial private forest land. A practice may consist of multiple components.

Practice plan. A plan prepared by a service representative and approved by the State Forester that documents the specific practices that are to occur as a result of a landowner application for cost-share. A practice plan may be a stand-alone document or it may be a part of a management plan.

Responsible official. USDA Forest Service Regional Forester, Area Director, or Institute Director charged with the administration of FLEP.

Service representative. Any person who is recognized by a State Forester as having the knowledge and skills to develop management plans, understanding of the economic and environmental interrelationships of forestry and/or agroforestry resources, and the ability to identify appropriate activities to manage, protect, or enhance such resources. The State Forester designates service representatives as the line officers to perform specified FLEP elements.

State. Includes each of the States in the United States, and the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

State Forester. The director or other head of a State forestry agency or equivalent State official.

State priority plan. The document required from a State to participate in FLEP. A State Forester jointly prepares this plan with the State Forest Stewardship Coordinating Committee to facilitate long-term sustainability of nonindustrial private forest lands within the State.

§ 230.32 National program administration.

(a) The Chief shall develop and implement FLEP in partnership with State forestry agencies and in consultation with other Federal, State, and local natural resource management agencies, institutions of higher learning, and a broad range of private sector interests.

(b) In collaboration with State Foresters, the Chief of the Forest Service

and Responsible Officials shall oversee developing and implementing FLEP policy and procedure, including the monitoring of program results over the life of FLEP to ensure that environmental, economic, and social values and public benefits are derived from the program.

(c) The Chief shall annually distribute such funds as may be available for FLEP to the Responsible Official(s) for each of the three geographic funding areas based on the criteria set out in the Forest Service Manual Chapter 3310.

(d) In developing allocation factors for making FLEP distributions under this subpart,

(1) The Chief shall consult with the State Foresters through their Forest Resource Management Committee, a standing committee of the National Association of State Foresters, or its successor.

(2) Allocation factors shall be based on National data sources that address the current status of forest lands of each State or Territory participating in FLEP. Data must be measurable, inclusive of all States, objective, and reliable. The data will address those factors described in the Cooperative Forestry Assistance Act (16 U.S.C. 2103(i), Distribution of Cost-Share Funds).

(e) National priorities for FLEP shall reflect the Department and Forest Service priorities for nonindustrial private forest land as provided in the Forest Service Manual Chapter 3310.

(f) The Responsible Official(s) in each of the three geographic funding areas shall coordinate with their respective State Foresters to determine the final allocation to each State based on the following:

- (1) National priorities;
- (2) National allocation factors;
- (3) Regional and State-wide priorities;
- (4) Ability of the State to deliver FLEP; and
- (5) Direction in the Forest Service Manual Chapter 3310.

(g) FLEP financial assistance may be disbursed to a third party that will assist in program delivery. The Forest Service may disburse funds directly to a third party, which may include, but is not limited to, Federal, State, or local agencies, and landowner, nonprofit, or private organizations, with written approval by the State Forester.

(h) Except as provided at § 230.34(d), no financial assistance shall be provided by the Forest Service to a State Forester or any third party, until the Responsible Official has concurred with the State's priority plan.

(i) The Chief has final authority to resolve all issues that may arise in the administration of FLEP.

(j) The Forest Service shall provide National and regional administrative and financial support and oversight through distribution of available FLEP funds to State Foresters and through monitoring, review, and evaluation of FLEP activities and accomplishments.

(k) FLEP funds may not be used by States for capital investments or capital improvements unless specifically authorized in a funding document and must be limited to \$5,000. The limitation on capital improvements excludes practices and activities cost-shared with landowners through FLEP.

(l) Funds may not be authorized in the financial assistance document or used for the purchase of land, any interest in land, or any interest in an endowment.

(m) By September 30, 2006, the Chief must submit a cumulative report to the Secretary of Agriculture summarizing all the activities and practices funded under FLEP as of that date.

§ 230.33 Responsible Official program administration.

(a) The Responsible Official shall review and provide concurrence with State priority plans, including any revisions of such plans.

(b) The Responsible Official shall provide oversight for all aspects of FLEP, including program reviews and shall ensure that the Forest Service is represented on each State Forest Stewardship Coordinating Committee.

(c) The Responsible Official shall disburse funds to the State Forester or their designated third parties in a timely manner.

(d) The Responsible Official shall determine the final funds distribution to States.

(e) The funds will be distributed to individual States based on criteria in § 230.32 (f).

(f) Policy in the Forest Service Manual Chapter 3310 will provide additional direction for funding distribution.

(g) The Responsible Official must submit an annual report to the Chief summarizing all activities and practices funded through FLEP for the previous fiscal year.

(h) By September 1, 2006, the Responsible Official must submit a cumulative report to the Chief summarizing all activities and practices funded through FLEP as of June 1, 2006, along with copies of the reports submitted from the participating States.

§ 230.34 State program administration.

(a) In States electing to participate in FLEP, the State Forester and the State Forest Stewardship Coordinating Committee, established pursuant to section 19(b) of the Cooperative Forestry

Assistance Act, as amended (16 U.S.C. 2101, *et seq.*), shall jointly develop a State priority plan. The plan must be submitted to the appropriate Responsible Official for review and concurrence.

(b) The State Forester shall develop, implement and administer FLEP consistent with the State priority plan. The State Forester must ensure that all activities are carried out properly and that all cost-shared practices meet the appropriate standards and specifications.

(c) No match of funds is required from the State for participation in FLEP.

(d) In order to facilitate development of FLEP any State may request up to \$50,000 of the first-year allocation in advance of Forest Service concurrence with a State priority plan.

(e) Each State participating in FLEP shall submit an annual report to the respective Responsible Official, reporting all activities and practices funded through FLEP for the previous fiscal year. The report shall contain data on accomplishments by educational assistance, technical assistance, and cost-share assistance based on State objectives and measurable outcomes included in State priority plans.

(f) By July 15, 2006, the State Forester of each State participating in FLEP must submit to the respective Responsible Official a summary report of all State activities and practices funded through FLEP as of June 1, 2006.

§ 230.35 FLEP elements.

(a) States may use FLEP funds to assist landowners in managing their nonindustrial private forest lands and related resources through the following elements:

- (1) Development and implementation of educational programs;
- (2) Resource management expertise and technical assistance; and
- (3) Financial assistance through cost-share programs.

(b) All participating States may use a portion of allocated funds for FLEP administration costs.

(c) States do not have to participate in all FLEP elements.

§ 230.36 State priority plan—purpose and scope.

(a) The State priority plan shall be used to guide FLEP implementation in each participating State through fiscal year 2007 and can be revised as needed.

(b) The State priority plan must describe the various roles and responsibilities of the State Forester, State Forest Stewardship Coordinating Committee, and other agencies and organizations in FLEP planning,

delivery, and accountability to the program objectives.

(c) The State priority plan must contain the following:

(1) Data from standard forest inventory and analysis reports on the forest resources found within the State;

(2) A description of concerns, issues, problems and threats related to resource management for all nonindustrial private forest and agroforestry resources;

(3) Identification of the desired objectives and environmental, economic, and social values and public benefits to be derived from FLEP;

(4) An explanation of how FLEP funds are to be used to complement efforts of sustainable forestry management already in place within the State;

(5) A rationale for, and a proposed distribution of, funds for the FLEP elements listed at section 230.35 that the State plans to implement; and

(6) A description of the public participation process used in the development of the plan, including outreach efforts to landowners with limited resources.

(d) If an existing State Forest Stewardship plan, as described at section 19(b)(3) of the Cooperative Forestry Assistance Act (16 U.S.C. 2101, *et seq.*), adequately addresses some or all of the required information, it may be incorporated into the State priority plan by reference.

(e) The State priority plan must also outline the State FLEP priorities, policies, and procedures that will be implemented to encourage landowners to practice sustainable management and to actively conserve and enhance their forest resources.

(f) Each FLEP element described in the State priority plan must clearly state objectives and measurable outcomes to be achieved.

(g) All activities performed using FLEP funds must be consistent with the purpose of the program.

§ 230.37 State priority plan—educational assistance.

(a) Educational assistance includes development and delivery of:

- (1) Activities;
- (2) Events;
- (3) Programs;
- (4) Curriculum;
- (5) Written materials;
- (6) Workshops;
- (7) Training sessions;
- (8) Web site construction and maintenance; or

(9) Similar activities designed to bring landowners to an informed decision point and accelerate adoption of sustainable forest practices in a State.

(b) If a State determines that all or some of its funds will be used for

education, the State priority plan must describe the types of activities that will be covered, participating entities, expected outcomes, and method(s) that will be used for documenting and evaluating accomplishments.

§ 230.38 State priority plan—technical assistance.

(a) Technical assistance includes, but is not limited to:

(1) Agreements with other agencies, institutions of higher education, natural resource consultants, or private organizations to augment or complement existing services of a State Forestry agency;

(2) Grants, agreements, contracts or other arrangements to provide services to landowners not offered by a State;

(3) Support of existing technical assistance delivery by State forestry agencies or development of such technical assistance;

(4) The development or application of new tools or technology for servicing landowners; or

(5) Similar undertakings.

(b) If a State determines that all or some of its funds will be used for technical assistance, the State priority plan shall describe:

(1) Who will provide the assistance;

(2) Outreach efforts directed at specific groups or categories of landowners;

(3) Expected long- and short-term outcomes; and

(4) Method(s) for documenting accomplishments.

§ 230.39 State priority plan—financial assistance.

(a) Cost-share financial assistance includes a wide range of activities and practices developed by a State Forester, in cooperation with the State Forest Stewardship Coordinating Committee.

(b) A State does not have to adopt a separate FLEP cost-share program if a State cost-share program already exists that meets the objectives of FLEP.

However, FLEP funds must be accounted for in accordance with Federal financial accounting standards. If an existing cost-share program is used, a copy of the guidelines for that program must be referenced and attached to the State priority plan.

(c) If a State determines that all or some of its funds will be placed into a cost-share program, the State priority plan must identify and describe how the cost-share funds will be made available to landowners participating in FLEP and expected outcomes and method(s) for documenting and evaluating accomplishments.

(d) The cost-share section of the State priority plan must include all of the following information:

(1) Describe any land ownership or annual acreage eligibility limitation under FLEP that is more restrictive 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 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 identified 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 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 nonindustrial 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.

§ 230.45 Recapture of cost-share assistance.

(a) Payments made to landowners may be recaptured under one or more of the following circumstances:

(1) If any landowner, successor, or assignee uses any scheme or device to unjustly benefit from FLEP. 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 FLEP. Financial assistance payments shall be withheld or a refund of all or part of any FLEP payments otherwise due or paid to that person shall be secured.

(2) 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 payments shall be withheld or a recapture of all or part of any FLEP payments otherwise due or paid shall be secured, based on the extent and effect of destruction and impairment.

(3) If a landowner sells, conveys, or otherwise loses control of the land, except when determined by a State Forester to have been beyond the landowner's control, 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. In such cases the landowner who was originally obligated to maintain the practice shall be liable to reimburse the State(s) for all cost-share on such practices.

(b) Nothing in this section requiring the withholding or refunding of financial assistance payments shall preclude any penalty or liability otherwise imposed by law.

(c) Any landowner, successor, or assignee who is dissatisfied with any determination made under FLEP may request reconsideration by the State Forester and, if the matter is not resolved, by the Responsible Official. All requests for reconsideration shall be in writing and shall contain factual information explaining the basis for the request. All decisions on reconsideration must be issued in writing.

§ 230.46 Information collection requirements.

The requirements governing the preparation of a State priority plan, management plan, and practice plan, the reporting requirements, and the application requirements of this subpart constitute information requirements as defined by the Paperwork Reduction Act of 1995 and have been assigned Office of Management and Budget (OMB) control number 0596-0168.

Dated: May 30, 2003.

Mark Rey,

Under Secretary, Natural Resources and Environment.

[FR Doc. 03-14259 Filed 6-6-03; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AL17

Increase in Rates Payable Under the Montgomery GI Bill—Active Duty and Survivors' and Dependents' Educational Assistance Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the regulations governing rates of educational assistance payable under the Montgomery GI Bill—Active Duty and Survivors' and Dependents' Educational Assistance programs to reflect increases required by statutory provisions. These include increases that were effective October 1, 2001, and January 1, 2002, in both programs. For the Montgomery GI Bill—Active Duty program, these also include increases for the fiscal years beginning October 1, 2002, and October 1, 2003, under statutory provisions setting rates that for those two years are not to be adjusted by the Consumer Price Index-W.

DATES: *Effective Date:* This final rule is effective June 9, 2003.

Applicability Dates: The changes in rates are applied to conform to the respective statutory requirements. For more information concerning the dates of applicability, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Lynn M. Cossette, Education Advisor, Education Service, Veterans Benefit Administration, (202) 273-7294.

SUPPLEMENTARY INFORMATION: Under the formula mandated by 38 U.S.C. 3015 (as in effect on October 1, 2001) for Fiscal Year 2002, the rates of basic educational assistance under the Montgomery GI Bill—Active Duty (MGIB) payable to students pursuing a program of education full time were increased effective October 1, 2001, by 3.4%, which is the percentage by which the total of the monthly Consumer Price Index-W (CPI-W) for July 1, 2000, through June 30, 2001, exceeds the total of the monthly CPI-W for July 1, 1999, through June 30, 2000.

In addition, the Veterans Education and Benefits Expansion Act of 2001 (Pub. L. 107-103) increased the monthly rate of MGIB benefits in three steps. The effective date of step one is January 1, 2002. Step two is effective October 1, 2002, for Fiscal Year 2003 and step three is effective October 1, 2003, for Fiscal Year 2004. During Fiscal Years 2003 and 2004, the MGIB rates are not