

Draft - FOREST LAND ENHANCEMENT PROGRAM - Draft
MINNESOTA STATE PRIORITY PLAN

I. General Information, Background (Program Purpose, Audience, Beneficiaries) (Sec. 230.1)

- A. The Forest Lands Enhancement Program (FLEP) is authorized under the Cooperative Forestry Assistance Act of 1978 as amended by the Farm Security and Rural Investment Act of 2002, and is established to provide additional financial assistance to State Foresters to encourage the long-term sustainability of non-industrial private forestlands (NIPF).
- B. This State Priority Plan (SPP) sets forth the rules and procedures by which the FLEP will be administered by the Minnesota Department of Natural Resources, Division of Forestry (MNDNR - Forestry), to promote sustainable forest management practices on non-industrial private forest land. The resource management expertise, educational, and financial assistance provided under the Program shall complement rather than replace or duplicate any existing state and/or federal programs providing assistance to NIPF. Management activities and practices funded under this program shall be designed to provide multiple resource benefits.
- C. The Forest Land Enhancement Program will be used to enhance existing programs within the state. It will fulfill the requirements established by the Forest Service in that:
 - 1. Apportionment of funds received under this should result in a balanced and coordinated state and federal program that provides management expertise, financial assistance, and education to NIPF owners. State and other programs will be used to complement the program objectives.
 - 2. Currently the State employs approximately 30 FTEs to work on private lands and contracts with partners to provide additional assistance, while Coop. Extension provides landowner educational programming and materials. Thus, FLEP will be used to alleviate gaps in the availability of technical and financial assistance within the existing network of programs. Technical assistance to implement FLEP practices will be provided by professional foresters; either within the MNDNR - Forestry or the private sector.
 - 3. The FLEP educational program may include technical training to resource professionals to improve efficiency and effectiveness in the implementation of FLEP practices. The State Forest Stewardship Committee will make recommendations for educational, technical, and financial needs to the State Forester.

Draft - FOREST LAND ENHANCEMENT PROGRAM - Draft
MINNESOTA STATE PRIORITY PLAN

II. Definitions

- A. Definitions are the same as found in the Draft Interim Rules.

III. National Program Administration (Sec. 230.3)

The Chief will:

1. USDA-FS will provide general program oversight
2. Distribute funding to states
3. Be guided by the rules to distribute funds
4. In consultation may develop priorities and practices in addition to national priorities of tree planting, forest stand maintenance, and improvement
5. Review State Priority Plans and provide concurrence
6. Enter into agreements with other USDA agency
7. Funds will be distributed with no required match, in one payment of the total amount annually upon concurrence of the Regional Forester of the SPP
8. Retain final authority to resolve issues that may arise.

IV. State Program Administration (Sec 230.4)

- A. This State Priority Plan (SPP) is developed and will be maintained to establish program priorities, policies, and procedures. In implementing the program, Minnesota shall target resources to achieve the objects of the federal program by providing educational objectives, technical assistance, and financial assistance for forest landowners that participate in the program.

Minnesota's objectives are in complete accordance with the federal objectives. The federal objectives of this program are to invest in practices to establish, restore, protect, manage, maintain, and enhance the health and productivity of the NIPF lands in the United States for timber, habitat for flora and fauna, soil, water, and air quality, wetlands, and riparian buffers. The program targets afforestation, reforestation, improvement of poorly stocked stands, timber stand improvement, practices necessary to improve seedling growth and survival, and growth enhancement practices where needed to enhance and sustain the long-term productivity of timber and nontimber forest resources to help meet future public demand for all forest resources and provide environmental benefits. Other objectives are to reduce the risks and to help restore, recover, and mitigate the damage to forest caused by fire, insects, invasive species, disease, and damaging weather among other benefits.

Draft - FOREST LAND ENHANCEMENT PROGRAM - Draft
MINNESOTA STATE PRIORITY PLAN

- B. The plan, developed by the State Forester with concurrence of the State Stewardship Coordinating Committee, will outline program policies, priorities and procedures necessary to accomplish the objectives. In addition, this plan will be shared with the NRCS State Technical Committee, and the Minnesota Forestry Association.

- C. The plan will become effective June 30, 2003, contingent upon receipt of program funding to the state, and continue through FY 2007. However, the plan can be revised, if necessary, on an annual basis.

- D. Responsibilities
 - 1. The Chief will: See section III of this SPP.

 - 2. State Forester will:
 - a. Develop and maintain state priority plan to establish program priorities, policies and procedures

 - b. Document SSCC program involvement

 - c. Administer FLEP Funding

 - d. Monitor program progress

 - e. Report accomplishments to USDA-FS

 - 3. State Stewardship Coordinating Committee will:
 - a. Development, review and approval of State Priority Plan

 - b. Maintain written record of program involvement through minutes and other process documentation

 - c. Monitor program progress

 - d. Other State specific duties

 - e. Other Agencies/Organizations not represented on SSCC are not anticipated as participating in the Program.

 - 4. Upon receipt of FLEP funding the program will be administered by MNDNR-Forestry in a manner patterned after the State cost-share program.

 - 5. Program progress will be monitored by MNDNR-Forestry staff. Accomplishments reporting will be made using standard reporting procedures.

Draft - FOREST LAND ENHANCEMENT PROGRAM - Draft
MINNESOTA STATE PRIORITY PLAN

6. This plan developed by the State Forester, with concurrence of the State Stewardship Coordinating Committee, and with the consideration of public input is available to those requesting copies.
7. Upon completion, the SPP will be submitted to the USFS, Regional Forester, St. Paul, for concurrence.
8. The baseline data on the forest resources of the State can be found in the State Stewardship Plan.
9. The State Forest Stewardship Committee, in conjunction with the State Forester developed outlined a preferred delivery method for FLEP in Minnesota. We will use a combination of educational, technical, and financial assistance to make sure landowners receive the information they need to properly manage their forestlands.
 - a. Within Minnesota, a review of existing programs indicates there are adequate funds available for educational activities for private forest landowners. Although technical assistance funds are available through the state funded Sustainable Woodlands Program and the federally supported Forest Stewardship Program, the funds available are not adequate to meet all landowner needs. In addition, the State Forest Stewardship Committee understands the importance of financial incentives to encourage proper forest management and realizes there are not sufficient dollars available. With that in mind, Minnesota will augment existing technical assistance resources with FLEP funds to fund partners in the private sector to prepare Forest Stewardship Plans for landowners, and use much of the funds for cost sharing assistance to landowners with Stewardship Plans.

Within the cost share element of this plan, individual practice priorities may be found in the attached **Minnesota Forest Land Enhancement Program, Annual Cost Share Plan**. This annual plan may be updated periodically and the Forest Service will receive copies of these updates.

- b. Depending on the total allocation to the state, we anticipate approximately 20% of the funds for program administration. Of the remaining funds, Minnesota has will use 30% for technical assistance (24% of total) and 70% for cost-share assistance (56% of total). The administrative dollars will be used to support program oversight including processing applications, issuing payments, and maintaining program records and documentation. The technical assistance funds will be to prepare Forest Stewardship Plans for interested landowners.
10. The Minnesota Forest Land Enhancement Program, Annual Cost Share Plan addresses the policies, procedures and implementation strategies for implementation of the cost share element of the Forest Land Enhancement Program. In particular, the plan will include:
 - a. Ownership and acreage limitations
 - b. Eligible practices and priorities

Draft - FOREST LAND ENHANCEMENT PROGRAM - Draft
MINNESOTA STATE PRIORITY PLAN

- c. Land eligibility
 - d. Application procedures
 - e. Approval, certification, and payment processes
 - f. Contract Length
 - g. Limitations of program application
 - h. Cancellation procedures
 - i. Appeals procedures
11. Forest Management Plan is defined in section VI
 12. The State Priority Plan will be displayed on the MNDNR – Forestry web site and is available upon request.
 13. Maintenance and compliance see V (e)
 14. Recapture of funds, see X

V. Eligibility Requirements (Sec. 230.5)

A. Who Qualifies for FLEP Assistance

1. Nonindustrial Private Landowners qualify for FLEP. Owner means any private individual, group, association, corporation, Indian tribe or other native group, or other private legal entity, excluding corporations whose stocks are publicly traded or legal entities principally engaged in the production of wood products.
2. All NIPF landowners as defined in Sec. 230.2 of the draft rule, including those who produce forest products on a part-time or intermittent basis, who meet the requirements of this section, are eligible to apply for and receive assistance under the program without regard to race, color, religion, national origin, age, sex, marital status, or handicap.
3. Division of Forestry personnel are eligible for FLEP. Projects on land belonging to full-time DOF employees will be approved/disapproved by the Director, Forest Management.
4. Public ownerships do NOT qualify.

B. Landowners must agree to maintain FLEP practices for a minimum of 10 years unless otherwise designated by the State Stewardship Coordinating Committee (SSCC). Landowners who fail to maintain the practice for 10 years will be required to repay the Minnesota Department of Forestry the cost share (plus 10 per cent). If the property is sold and the practice is not maintained, the original landowner is liable for the repayment.

C. Payment and other limitations are included in the Minnesota Forest Land Enhancement Program Annual Cost Share Plan

Draft - FOREST LAND ENHANCEMENT PROGRAM - Draft
MINNESOTA STATE PRIORITY PLAN

VI. Forest Management Plan (Sec. 230.6)

- A. Landowners must have a Management Plan to qualify for FLEP, that describes projects and activities to be carried out by the landowner, consistent with the landowner's objectives. The plan shall apply to those portions of NIPF lands of the owner on which any project or activity funded under the program will be carried out as well as lands of the owner that will be affected by the activity or practice. The Plan shall include environmental considerations. Landowners are not required to have a Forest Stewardship Plan or a farm conservation plan on open land.
- B. Forest Stewardship Plans, Tree Farm Plans or other plans may be modified by the addition of the FLEP Application/Management Plan.

VII. Program Practices (Sec. 230.7)

- A. Program practices available are included in the Minnesota State FLEP cost share docket and include:
 - 1. FLEP 1-Forest Stewardship Plans
 - 2. FLEP 2-Afforestation/Reforestation
 - 3. FLEP 3-Forest Stand Improvement
 - 4. FLEP 4-Agroforestry
 - 5. FLEP 5-Water Quality Improvement and Watershed Protection
 - 6. FLEP 6-Fish and Wildlife Habitat
 - 7. FLEP 7-Forest Health and Protection
 - 8. FLEP 8-Invasive Species Control
 - 9. FLEP 9-Fire and Catastrophic Risk Reduction
 - 10. FLEP 10-Fire and Catastrophic Event Rehabilitation
- 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.

Draft - FOREST LAND ENHANCEMENT PROGRAM - Draft
MINNESOTA STATE PRIORITY PLAN

VIII. Payment to Landowners (Sec. 230.9)

- A. The landowner will have 12 months to complete a practice. If factors beyond the control of the landowner delay the practice completion, a 6 month extension can be granted. Practices not completed by the end of the contract will be cancelled.
- B. Upon certification by the Area Forester that the practice has been completed in accordance with specifications, the cost-share will be calculated and dispersed to the landowner. The service representatives shall have the right of access to the owner's property to inspect practices for the duration of the practice maintenance period.
- C. FLEP payments cannot exceed 75 percent of the actual costs incurred by a participating owner. Non-Federal program funds and other donated assistance may be used to supplement cost-share under the program; however, the total of all funds and assistance shall not exceed 100 percent of the actual cost of practice implementation.
- D. 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 needed to meet the objectives of the forest management plan; or
 - 2. The landowner establishes to the satisfaction of the Service Representative that:
 - a. A reasonable effort was made to meet the minimum requirements; and the practice, as performed, adequately meets the objectives of the landowner as described in the forest management plan.
- E. In case of death or incompetence of any landowner, the State Forester shall approve cost-share to the successor if the successor agrees to maintain the practices for the duration of the required maintenance period.
- F. 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 that 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, the State Forester nor any disbursing agent shall be liable in any suit if payment is made to an

Draft - FOREST LAND ENHANCEMENT PROGRAM - Draft

MINNESOTA STATE PRIORITY PLAN

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, the State Forester or any disbursing agent if payment is not made to the assignee, or if payment is made to only one of several assignees.

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

4. Procedures and limitations for assignment of payments may be found in the MN Forest Land Enhancement Program Annual Cost Share Plan.

IX. Prohibitions. Sec. 230.10

A. No financial assistance funds shall be paid for the following:

1. Costs incurred, for activities completed, before an application for cost-share is approved; and
2. No Cost-share shall be paid for repeating practices on the same site by the same landowner 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.

B. Expending program funds by for capital investments, capital improvements, purchase of land or any interest in land, or any interest in an endowment is not permitted.

X. Recapture of Payment. Sec. 230.11

A. If any owner, successor, or assignee uses any scheme or device to unjustly benefit from this program, the financial assistance 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 owner 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, financial assistance 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. If an owner sells, conveys, or otherwise loses control of lands, upon which there is a continuing obligation to maintain a practice, and the new owner does not agree to assume the responsibility for maintaining the practice, the owner who was originally obligated to maintain the practice shall be liable to reimburse the State(s) for all cost-share on such practices if the practice is destroyed within the required maintenance period.

Draft - FOREST LAND ENHANCEMENT PROGRAM - Draft
MINNESOTA STATE PRIORITY PLAN

- D. Nothing in this section requiring the withholding or refunding of financial assistance funds shall preclude any penalty or liability otherwise imposed by law.
- E. Where the owner has received cost-share for any practice that has been unsuccessful, due to factors beyond the owner's control, the service Representative may require that the practice be re-established and shall approve cost-share for such activity.

XI. Reconsideration. Sec. 230.12

Any owner, 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, Area Director, or Institute Director. 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.

XII. Information Requirements. Sec. 230.13

The requirements governing the preparation of a State priority plan in sec. 230.4 of this subpart, the forest management plan in sec. 230.6 of this subpart, and the application requirements of sec. 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 ****-****.