

commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) ("For relief of" or "Controls") "the symptoms of" (select one or more of the following, as appropriate: "dandruff," "seborrheic dermatitis," and/or "psoriasis.")

(2) The following terms or phrases may be used in place of or in addition to the words "For the relief of" or "Controls" in the indications in paragraph (b)(1) of this section: "fights," "reduces," "helps eliminate," "helps stop," "controls recurrence of," "fights recurrence of," "helps prevent recurrence of," "reduces recurrence of," "helps eliminate recurrence of," "helps stop recurrence of."

(3) The following terms may be used in place of the words "the symptoms of" in the indications in paragraph (b)(1) of this section: ("skin" and/or "scalp," as appropriate) (select one or more of the following: "itching," "irritation," "redness," "flaking," "scaling,") "associated with."

(c) **Warnings.** The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For products containing any ingredient identified in § 358.710.* (i) "For external use only."

(ii) "Avoid contact with the eyes. If contact occurs, rinse eyes thoroughly with water."

(iii) "If condition worsens or does not improve after regular use of this product as directed, consult a doctor."

(2) *For any product containing coal tar identified in § 358.710(a), (b), or (c).*

(i) "Use caution in exposing skin to sunlight after applying this product. It may increase your tendency to sunburn for up to 24 hours after application."

(ii) "Do not use for prolonged periods without consulting a doctor."

(3) *For products containing coal tar when formulated to be applied and left on the skin (e.g., creams, ointments, lotions).* "Do not use this product in or around the rectum or in the genital area or groin except on the advice of a doctor."

(4) *For products containing coal tar identified in § 358.710(c) for the control of psoriasis.* "Do not use this product with other forms of psoriasis therapy such as ultraviolet radiation or prescription drugs unless directed to do so by a doctor."

(5) *For products containing any ingredient identified in § 358.710(b) or (c) for the control of seborrheic dermatitis or psoriasis.* "If condition covers a large area of the body, consult your doctor before using this product."

(d) **Directions.** The labeling of the product contains the following information under the heading "Directions." More detailed directions

applicable to a particular product formulation may also be included.

(1) *For products containing active ingredients for the control of dandruff, seborrheic dermatitis, or psoriasis when formulated to be applied and then washed off after brief (a few minutes) exposure (e.g., shampoos, preshampoo rinses, postshampoo rinses).* "For best results use at least twice a week or as directed by a doctor."

(2) *For products containing active ingredients for the control of dandruff, seborrheic dermatitis, or psoriasis when formulated so as to be applied and left on the skin or scalp (e.g., creams, ointments, lotions, hairgrooms).* "Apply to affected areas one to four times daily or as directed by a doctor."

(3) *For products containing active ingredients for the control of seborrheic dermatitis or psoriasis of the skin when formulated as soaps.* "Use on affected areas in place of your regular soap."

(e) The word "physician" may be substituted for the word "doctor" in any of the labeling statements in this section.

Dated: July 31, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 91-28893 Filed 12-3-91; 8:45 am]

BILLING CODE 4160-01-M

FRIDAY

Wednesday
December 4, 1991

Part III

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Sisseton-Wahpeton, South
Dakota; Approved Tribal-State Compact;
Notice

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs****Indian Gaming; Sisseton-Wahpeton Sioux Tribe, South Dakota; Approved Tribal-State Compact**

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100-497), the Secretary of the Interior shall publish, in the *Federal Register*, notice of approved Tribal-State Compacts or considered approved for the purpose of engaging in Class III (casino) gambling on Indian

reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority is publishing a Tribal-State Compact between the Sisseton-Wahpeton Sioux Tribe and the State of South Dakota which is considered approved, but only to the extent the compact is consistent with the provisions of the Indian Gaming Regulatory Act.

SUPPLEMENTAL INFORMATION: Because the expiration of the 45 days specified in 25 U.S.C. 2710(d)(8)(B) in which the Secretary could approve or disapprove this compact, the Lower Brule Sioux Tribe video lottery compact is considered approved as specified in 25 U.S.C. 2710(d)(8)(B) to the extent that it is consistent with the Indian Gaming Regulatory Act.

However, it is our opinion that section 11.1 of part A of the compact is not consistent with the Act.

DATES: This action is effective December 4, 1991.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 "C" Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Joyce Grisham, Bureau of Indian Affairs, Washington, DC 20240, (202) 208-7445.

Dated: November 26, 1991.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91-29093 Filed 12-3-91; 8:45 am]

BILLING CODE 4310-02-M

Registered

Wednesday
December 4, 1991

Part IV

Department of Education

34 CFR Parts 600 and 668
Institutional Eligibility Under The Higher
Education Act of 1965; Student
Assistance General Provisions; Notice of
Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Parts 600 and 668

RIN 1840-AB46

Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend parts 600 and 668 of title 34 of the Code of Federal Regulations governing the student financial assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA programs). These amendments are necessary to prevent serious abuses of the statutory requirement that an institution that seeks eligibility as a proprietary institution of higher education, a postsecondary vocational institution, or a vocational school must have been in existence for two years (the two-year rule). The proposed regulations would apply the two-year rule to locations of eligible institutions and would make certain conforming changes and technical changes.

DATES: Comments must be received on or before January 21, 1992.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Ms. Carol F. Sperry, U.S. Department of Education, 400 Maryland Avenue, SW. (Regional Office Building 3, room 3030), Washington, DC 20202-5242.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act Section of this preamble.

FOR FURTHER INFORMATION

CONTACT: Ann S. Clough, U.S. Department of Education, 400 Maryland Avenue, SW. (Regional Office Building 3, room 3030), Washington, DC 20202-5242. Telephone (202) 708-4906. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern Time.

SUPPLEMENTARY INFORMATION: The Institutional Eligibility regulations contain requirements that postsecondary educational institutions must meet in order to be eligible to apply for participation in programs authorized under the Higher Education Act of 1965, as amended (HEA). The Student Assistance General Provisions

regulations contain requirements that are common to the participation of postsecondary institutions in the Title IV, HEA programs. The Title IV, HEA programs include the Pell Grant, Stafford Loan (formerly Guaranteed Student Loan), PLUS, Supplemental Loans for Students, Consolidation Loan, Income Contingent Loan, Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant, and State Student Incentive Grant programs.

Background on the Two-Year Rule and Additional Locations

Among the criteria that must be met by an institution in order for it to qualify as an eligible proprietary institution of higher education, postsecondary vocational institution, or vocational school, is the statutory requirement that the institution have been in existence for two years (the two-year rule).

The statutory two-year rule has two principal objectives: ensuring that an institution has the financial and administrative capability to operate independently of Title IV, HEA program funds before the institution is permitted to participate in these programs, and ensuring that an institution exists primarily to provide an educational and training function rather than to participate in the student financial assistance programs.

Under current Education Department (ED) practice, the Secretary permits eligible institutions to add locations to those included within the institutional eligibility notice issued by the Secretary without subjecting the added locations to the two-year rule. Under this practice, there has been tremendous growth in the number of locations participating in the Title IV, HEA programs. In a significant number of instances, particularly in the proprietary school sector, this growth has exceeded the administrative and financial capabilities of the institutions to meet their responsibilities under the Title IV, HEA programs.

An example of this uncontrolled expansion through added locations is a school that established 20 "branch campuses" nationwide in three years, and whose annual tuition receipts grew from \$2 million to \$26 million in that period. When the school closed, it owed more than \$10 million in refunds to students and former students. Moreover, at one location of the school, of more than 1,500 students who had enrolled, only 100 graduated and only 10 found jobs in the field for which they had been trained. At another location of that school, only 40 of 1,600 students graduated.

It is apparent to the Secretary that, even in cases where the abuses are not as flagrant as the example, expansion of institutions through the addition of locations frequently has been financed to a large extent through the availability of Title IV, HEA program funds. This expansion has all too often been undertaken without either sufficient capital reserves or sufficient and adequate personnel to provide an acceptable level of training and to administer properly the Title IV, HEA programs.

In addition to their use for unrestricted expansion, additional locations are also a device for circumventing the two-year rule in the creation of new eligible institutions. Often, after a location has been in existence for two years, it separates from its parent and obtains accreditation, eligibility, and certification as a free-standing institution. In purported satisfaction of the two-year rule, the newly established free-standing institution relies on its experience in its prior status as a subordinate location of an eligible institution. Thus, despite the objectives of the two-year rule to ensure the capacity of an institution to operate independently of Federal funds and to ensure that the institution is not created primarily to obtain Federal funds, an eligible institution has been created without ever having operated independently of the financial foundation of Federal student financial assistance. It is not uncommon for this now free-standing institution to start establishing its own added locations immediately.

A variation on the practice of conversions from added location to free-standing institution is the "lease-purchase" arrangement. This practice involves (a) the establishment of a new location by an eligible institution, frequently in a different State and frequently with an entirely unrelated curriculum, (b) the operation of the location for two years under the eligibility of the parent, and (c) the sale of the location (often to the manager of the location) after the two-year period. As in the case of an ordinary conversion to free-standing status, the new owner submits the institution's history as a location of its former parent institution in order to satisfy the two-year rule. In many of these cases, it is difficult to avoid the inference that the owner of the new institution has, in essence, rented the accreditation, eligibility, and certification of the former parent for a period of two years in order to avoid the two-year rule. The new institution thus

has gained access to Title IV, HEA program funds without ever having had to prove its viability in the absence of the financial underpinning provided by those funds.

Description of Proposed Changes

The Secretary is proposing to amend the Institutional Eligibility regulations by amending §§ 600.5, 600.6, and 600.7, and by adding a new § 600.12. Under these changes, each location that a proprietary institution of higher education, a postsecondary vocational institution, or a vocational school seeks to add to the locations included within the Secretary's designation of eligibility for that institution, must satisfy the two-year rule as a location of that eligible institution unless (a) that location provides no more than 50 percent of the instructional time of an eligible program (the remainder of the program being provided at a location that is included in the institutional eligibility notice issued by the Secretary), (b) that location is established solely to complete the training of students who had been enrolled at a school that had closed, or (c) that location is part of an institution of higher education under § 600.4 that in the case of a postsecondary vocational institution, has existed—either at that location or at another location—for at least two years. Also under these changes, any location of an eligible institution that seeks to become an eligible institution in its own right must satisfy the two-year rule as an independent, free-standing, institution, even if that location had been part of the eligible institution for two or more years, unless that location (i) was part of an institution of higher education under § 600.4 that has existed—either at that location or at another location—for at least two years, and (ii) continues to be part of an institution of higher education. This exception means that the new location must qualify as both an institution of higher education under § 600.4 and a postsecondary vocational institution.

An institution that provides postsecondary vocational training, such as a junior or community college, may qualify as both an "institution of higher education" under § 600.4 and a "postsecondary vocational institution" under § 600.6, because the HEA statutory definitions of the two types of institutions, with two exceptions, are virtually identical. One exception involves the length of the vocational program offered. Thus, the former type of institution offers long-term postsecondary vocational training programs of at least one year in length, while the latter type of institution offers

short-term postsecondary vocational training programs of between six months and one year in length.

The other exception involves the point in time when an institution may qualify as an eligible institution of higher education or an eligible postsecondary vocational institution. An educational institution may qualify as the former once it begins to provide postsecondary training, while an institution must have been providing vocational training for at least two years before it can qualify as the latter. Compare section 1201 (a) of the HEA (20 U.S.C. 1141(a)) with section 481(c)(3) of the HEA (20 U.S.C. 1088(c)). However, in those cases where an institution of higher education elects to provide short-term training programs eligible under the "postsecondary vocational institution" definition, and thus falls within both statutory definitions, the applicability of the statutory 2-year rule is ambiguous. Accordingly, the Secretary must harmonize those provisions to best effect Congress' purposes. As indicated above, the purpose of the 2-year rule is addressed to the viability of the educational institution, not merely to specific academic programs of a specified length. The Secretary has interpreted the 2-year rule to be satisfied if a postsecondary vocational program is part of an institution of higher education that has existed for two years, either at the same or a different location.

The Secretary believes that this approach carries out the principal objectives of the two-year rule, as described above. As a practical matter, currently, an educational institution, such as a junior or community college, that qualifies as both types of institutions does not create a separate component within the institution to offer short-term training programs merely because those programs qualify the institution as a postsecondary vocational institution, as opposed to an institution of higher education. Nor does the institution establish different enrollment standards for such programs or separate faculty for such programs. Consequently, the dual categorization of such an institution under the HEA, based upon the long term or short term nature of the programs it offers, would be artificial. Moreover, the Secretary has no evidence that abuses of the two-year rule have occurred among these institutions.

As noted above, if such an educational institution offers both short-term and long-term vocational training programs at a new location, the long-term program immediately becomes eligible to participate in the Title IV,

HEA Programs. The Secretary believes that, to the extent possible, the same result should apply with regard to the short-term program in terms of initial institutional eligibility and the eligibility of new locations.

To produce this result, the Secretary has proposed that an educational institution may satisfy the two-year rule for a postsecondary vocational institution if that institution also qualifies as an eligible institution of higher education, and has qualified as an eligible institution of higher education during the 24 months preceding the date of application for eligibility as a postsecondary vocational institution. With regard to initial eligibility, these proposed regulations are contained in § 600.6(b)(2). With regard to the eligibility of new locations, these proposed regulations are contained in § 600.12(b)(1).

An educational institution may also qualify as both an institution of higher education and vocational school under the Guaranteed Student Loan Programs. Under section 435(c) of the HEA, in order to qualify as an eligible vocational school, an educational institution must have been in existence for two years, or be "specially accredited by the Secretary" as having met the other definitional elements of a vocational school. The Secretary proposes to amend § 600.7 to provide that the Secretary will specially accredit an educational institution as a vocational school, if the institution qualifies as an institution of higher education under § 600.4 and satisfies all the elements of the definition of a vocational school, other than having been in existence for two years. This proposal reflects the Secretary's judgment that the 2-year rule is unnecessary, for the reasons described above, if a vocational school is part of an institution of higher education, and that special accreditation is warranted in these cases. With regard to initial eligibility of a vocational school, these proposed regulations are contained in §§ 600.7(b)(2) and 600.7(d). With regard to the eligibility of new locations, these proposed regulations are contained in § 600.12(b)(1).

The Secretary requests comments on these provisions, including any alternative approaches to addressing abuses of the 2-year requirement.

The Secretary also proposes to amend § 600.32 by deleting paragraphs (c) and (d), which are subsumed by § 600.12, by revising paragraph (b) accordingly, and by re-designating paragraph (e) as paragraph (c).

In addition, the Secretary proposes to amend § 668.12 of the Student

Assistance General Provisions regulations by adding a new paragraph (f). Under this new paragraph the institution's program participation agreement (under which the institution participates in the Title IV, HEA programs) would automatically terminate with regard to a location if and when that location ceases to be a part of the eligible institution. This change is needed because of the proposed addition of new § 600.12.

Institutions Affected by These Proposed Regulations

These proposed regulations would apply to any institution that is or seeks to become eligible as a proprietary institution of higher education, a postsecondary vocational institution, or a vocational school.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in that order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected by these proposed regulations are small institutions of postsecondary education. Although the proposed regulations would inhibit expansion financed by access to Title IV, HEA program funds, the regulations would not deny existing eligible institutions (including their existing additional locations) access to those Federal funds.

Paperwork Reduction Act of 1980

Sections 600.5, 600.6, 600.7, 600.30 and 600.31 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Annual public reporting burden for this collection of information is expected to average one-quarter hour per response for 100 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs,

room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3030, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays. To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 600

Administrative practice and procedure, College and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and record-keeping requirements, Student aid.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and record-keeping requirements, Student aid.

Dated: November 27, 1991.

Lamar Alexander

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.032 Guaranteed Student Loan Program; 84.032 PLUS Program; 84.032 Supplemental Loans for Students Program; 84.033 College Work-Study Program; 84.038 Perkins Loan Program; 84.226 Income Contingent Loan Program; 84.063 Pell Grant Program; 84.069 State Student Incentive Grant Program; 84.185 Robert. C. Byrd Honors Scholarship Program)

The Secretary proposes to amend parts 600 and 668 of Title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1094, and 1141, unless otherwise noted.

2. Section 600.5 is amended by removing the last sentence in paragraph (a)(7); by redesignating paragraph (b) as paragraph (c); by removing the cross-reference "(b)(1)" in redesignated paragraph (c)(2) and adding, in its place, "(c)(1)"; and by adding a new paragraph (b) to read as follows:

§ 600.5 Proprietary institution of higher education.

(b)(1) Except as provided in paragraph (b)(2) of this section, the Secretary considers an institution to have been in existence for two years only if it has been legally authorized to provide, and has provided, during the 24 months (except for normal vacation periods) preceding the date of application for eligibility, a continuous training program to prepare students for gainful employment in a recognized occupation.

(2) In determining whether an applicant institution satisfies the requirement contained in paragraph (b)(1) of this section, the Secretary does not count any period during which the applicant institution was a part of another eligible proprietary institution of higher education, postsecondary vocational institution, or vocational school.

3. Section 600.6 is amended by removing the last sentence in paragraph (a)(6); by redesignating paragraph (b) as paragraph (c); by removing the cross-reference "(b)(1)" in redesignated paragraph (c)(2) and adding, in its place, "(c)(1)"; and by adding a new paragraph (b) to read as follows:

§ 600.6 Postsecondary vocational institution.

(b)(1) Except as provided in paragraph (b)(2) of this section, the Secretary considers an institution to have been in existence for two years only if it has been legally authorized to provide, and has provided, during the 24 months (except for normal vacation periods) preceding the date of application for eligibility, a continuous training program to prepare students for gainful employment in a recognized occupation.

(2) In determining whether an applicant institution satisfies the

requirement contained in paragraph (b)(1) of this section, the Secretary—

(i) Counts any period during which the applicant institution qualified as an eligible institution of higher education;

(ii) Counts any period during which the applicant institution was part of another eligible institution of higher education, provided that the applicant institution continues to be part of an eligible institution of higher education; and

(iii) Does not count any period during which the applicant institution was a part of another eligible proprietary institution of higher education, postsecondary vocational institution, or vocational school.

4. Section 600.7 is amended by revising the phrase "Has been specifically determined by the Secretary" in paragraph (a)(5)(ii) to read "Has been specially accredited by the Secretary"; by redesignating paragraph (b) as paragraph (b)(1); and by adding a new paragraph (b)(2) and a new paragraph (d) to read as follows:

§ 600.7 Vocational school.

(b) * * *

(2) In determining whether an applicant institution satisfies the requirement contained in paragraph (b)(1) of this section, the Secretary does not count any period during which the applicant institution was a part of another eligible proprietary institution of higher education, postsecondary vocational institution, or vocational school.

(d) Under § 600.7(a)(5)(ii), the Secretary specifically determines that a school qualifies as an eligible location of a vocational school, despite not having been in existence for two years, only if the school also qualifies as an accredited, eligible institution of higher education.

5. Section 600.12 is added to read as follows:

§ 600.12 Providing education or training at locations not included within the Secretary's eligibility designation.

(a)(1) Except as provided in paragraph (b) of this section, if an educational institution that has been designated as an eligible proprietary institution of higher education, postsecondary vocational institution, or vocational school provides education or training at a location that is not included within the Secretary's eligibility designation for that institution, the Secretary does not consider that location to be part of the eligible proprietary institution of higher

education, postsecondary vocational institution, or vocational school until that location has been in existence for at least two years as part of that educational institution.

(2) The Secretary considers a location to have been in existence for at least two years only if the institution has been legally authorized to provide, and has provided, at that location, during the 24 months (except for normal vacation periods) preceding the date of the application for a designation of eligibility for that location, a continuous training program to prepare students for gainful employment in a recognized occupation.

(b) If an educational institution that has been designated by the Secretary as an eligible proprietary institution of higher education, postsecondary vocational institution, or vocational school provides education or training at a location that is not included within the Secretary's eligibility designation for that institution, the Secretary considers that location to be part of the eligible proprietary institution of higher education, postsecondary vocational institution, or vocational school if—

(1) That location is also a part of an eligible institution of higher education, and the institution of higher education has provided postsecondary education or training at any location during the 24 months (except for normal vacation periods) preceding the date of application for eligibility of that location;

(2)(i) The education or training provided at the new location does not include more than 50 percent of the instructional time of any eligible program, as defined in 34 CFR § 668.8; and

(ii) The balance of any eligible program of which a portion of the education or training is provided at the new location is provided by the eligible institution at a location or locations included within the Secretary's designation of eligibility for that institution; or

(3)(i) The institution provides education or training at the new location—

(A) Solely to students enrolled in an eligible program, as defined in 34 CFR 668.8, at another eligible institution that has terminated teaching activities for that eligible program before its completion; and

(B) In order to enable those students to complete their courses of study or substantially similar courses of study; and

(ii) The period of education or training provided at that location to any of those students does not exceed one year.

(Authority: 20 U.S.C. 1085, 1088)

6. Section 600.30 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 600.30 Institutional changes requiring review by the Secretary.

(a) Except as provided in paragraph (b) of this section, an eligible institution shall notify the Secretary in writing, at an address specified by the Secretary in a notice published in the **Federal Register**, at the same time that it notifies its accrediting agency or association, but not later than 10 days after the change occurs, of any change in the following information provided in the institution's eligibility application:

7. In § 600.31, paragraph (a) is amended by removing the word "and" at the end of paragraph (a)(4), removing the period and adding "; and" at the end of paragraph (a)(5), and adding a new paragraph (a)(6), to read as follows:

§ 600.31 Change in ownership resulting in a change of control.

(a) * * *

(6) If the institution has been divided into two or more institutions, all of the resulting institutions have jointly notified the Secretary in writing as to which one of the resulting institutions they consider to be the same institution.

8. In § 600.32, paragraphs (c) and (d) are deleted, paragraph (e) is redesignated as paragraph (c) and paragraph (b) is revised to read as follows:

§ 600.32 Eligibility of additional locations.

(b) To qualify as an eligible location, the additional location must satisfy the applicable requirements of this section, §§ 600.4 through 600.7, and § 600.12.

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

9. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

10. Section 668.12 is amended by adding a new paragraph (f) and by revising the authority citation to read as follows:

§ 668.12 Institutional participation agreement.

(f) An institution's participation agreement automatically terminates with respect to any one of the institution's locations on the date that

the location ceases to be a part of the eligible institution.

(Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141)

[FR Doc. 91-29006 Filed 12-3-91; 8:45 am]

BILLING CODE 4000-01-M

Forest Practice

Wednesday
December 4, 1991

Part V

Department of Agriculture

Forest Service

36 CFR Part 230

State and Private Forestry Assistance;
Stewardship Incentive Program; Interim
Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 230

State and Private Forestry Assistance; Stewardship Incentive Program

AGENCY: Forest Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule establishes the interim procedures for administration of the Stewardship Incentive Program, authorized by the Food, Agriculture, Conservation, and Trade Act of 1990. The intended effect is to give timely notice to State forestry organizations, cooperating agencies and organizations, and potential landowner applicants of the rules governing this new cost-share program and to enable the Department of Agriculture to put this new program into operation to comply with Congressional appropriations for fiscal year 1991. Public comment is requested and will be considered in adoption of a final rule.

DATES: This rule is effective December 4, 1991.

Comments on the rule must be received in writing on or before January 21, 1992.

ADDRESSES: Send written comments to the Stewardship Incentive Program, Cooperative Forestry Staff (3200), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: Mary Carol Koester, Stewardship Incentive Program Specialist, 202-205-1381.

SUPPLEMENTARY INFORMATION:**Background**

The Stewardship Incentive Program (Program) is authorized under the Cooperative Forestry Assistance Act (1978) as amended by title XII of the Food, Agriculture, Conservation, and Trade Act of 1990 (the Act). This Program is intended to encourage private landowners throughout the United States to manage their forest lands for economic, environmental, and social benefits.

The establishment of a State and Private Forestry Title in the Food, Agriculture, Conservation, and Trade Act reflects a renewed recognition of the economic and environmental benefits of State and private forestry programs. Private landowners currently own 55 percent of the nation's forests; 45 percent of which are nonindustrial. Private forests provide much of the nation's fish and wildlife habitat,

wetlands, forest recreation, and wood supply. Moreover, domestic demand for wood products and other forest resources is expected to double over the next 50 years. In order to meet future demand for both commodity and non-commodity resources, protection and productivity of all forest resources must be augmented on private lands.

USDA currently provides landowners with various types of forestry assistance. The Cooperative Forestry Assistance Act and the Forestry Incentives Program provide technical, financial, and related assistance to State forestry organizations and private landowners. This assistance, however, is primarily limited to timber, insect, and disease management; for example, the Cooperative Forestry Assistance Act recognizes, but does not focus on, other forest uses such as fish and wildlife habitat, recreation, agroforestry, aesthetics, and soil and water quality. To meet present and future multiple resource management goals, the Stewardship Incentive Program includes a broad array of forest uses and is intended to complement and expand upon existing forestry assistance programs.

Cooperative Partnerships

The Stewardship Incentive Program is administered by the Forest Service of the United States Department of Agriculture (USDA). Section 1212 of the Act, entitled Findings, Purpose and Policy, states that the Department of Agriculture, through the coordinated effort of its agencies with forestry responsibilities, cooperating with other Federal agencies, State Foresters, and State political subdivisions, has the expertise and experience to assist private landowners in achieving individual goals and public benefits regarding forestry. This section further authorizes the Secretary to assist in the establishment of a coordinated and cooperative Federal, State, and local forest stewardship program for management of the non-Federal forest lands. Moreover, section 1212 states it is the policy of Congress that it is in the national interest for the Secretary to work through and in cooperation with State Foresters, or equivalent State officials, nongovernmental organizations, and the private sector in implementing Federal programs affecting non-Federal forest lands. Accordingly, the Forest Service intends to work through and in cooperation with these agencies and entities in implementing the Stewardship Incentive Program. Within each State, a State Forest Stewardship Coordinating Committee will be established as

required by the Act. The Committee, composed of representatives from other USDA agencies, State resource agencies, private landowners, forest industry, consulting foresters, and environmental and conservation organizations, will make recommendations to the State Forester concerning State program policy and operating procedure.

The Forest Service has received input from several agencies and organizations relative to the development of program policy, activities, and procedures. These include the Extension Service, Agricultural Stabilization and Conservation Service, and Soil Conservation Service.

Section-by-Section Analysis of Interim Rule

The rules governing Forest Service procedures for administering the Stewardship Incentive Program on nonindustrial private lands will be codified as a new subpart A of a new part 230 of title 36 of the Code of Federal Regulations. The following section-by-section analysis describes in detail the provisions of the interim rule.

Section 230.1 Purpose and Scope

This section cites the legal authority of the Stewardship Incentive Program and, as provided in the Act, states that cost-share assistance under the Program shall complement rather than replace or duplicate existing USDA landowner assistance programs.

Section 230.2 Definitions

This section defines special terms used in the interim rule.

Section 230.3 National Program Administration

Paragraph (a) requires the Chief to develop and oversee Program policy and procedure and to monitor implementation of such policy and procedure over the life of the Program. This directs the Chief to assume overall responsibility for Program administration within the Forest Service as stipulated in the Act.

Paragraph (b) of this section requires the Chief of the Forest Service to annually distribute such cost-share funds to the States as may be available following assessment of public benefits and consultation with a representative group of State Foresters. This consultation is important since each State Forester will administer the Program. Paragraph (c) of this section cites tree planting, tree maintenance, and tree improvement as a national priority for practices receiving cost-share funds and allows for the

development of additional national practice priorities by the Chief in consultation with the State Foresters.

Paragraph (d) requires the Chief to review and determine approval of State plans. This federal level review and approval is necessary to ensure that the Program accomplishes, in the aggregate, national forest resource enhancement goals and objectives and to ensure a certain level of consistency in the administration of the Program.

Paragraph (e) requires the Chief to annually reevaluate and set the percentage of Program funding to be made available for landowner forest stewardship plan development. Since landowner forest stewardship plans are required for landowners to receive cost-share funds under the Program, it is anticipated the demand for plan development will be high during the initial years of Program implementation; however, as landowner forest stewardship plans are developed and this need decreases over time, it is expected that the percentage of Program funds used to develop landowner forest stewardship plans will also decrease.

Paragraph (f) allows the Chief to enter into agreements with other USDA agencies to administer the Program. While this authority already exists, it is included in the rule to signal that the Forest Service intends to administer the Program drawing on the established expertise of other USDA agencies. The Forest Service may enter into agreements with other USDA agencies to perform all or part of the following: Determining participant eligibility, accepting applications for cost-share funds, managing accounting ledgers, arranging for the disbursement of Federal cost-share payments, and compiling statistical data on Program practices.

Finally, paragraph (g) provides that the Chief retain the final authority to resolve issues which may arise in the administration of the Program. Given the role of the States and the involvement of other agencies, it is essential to provide clear authority in the rule on the resolution of any issues that may arise.

Section 230.4 State Program Administration

This section directs the Secretary of Agriculture, in consultation with the State Forester, to establish a State Forest Stewardship Coordinating Committee to make recommendations to the State Forester on Program policy and procedure in the States, as required by the Act. Paragraph (b) lists those matters that the State Committee shall consider and recommend to the State Forester for approval.

Paragraph (b)(1) requires the Committee to identify and recommend unique resource needs and opportunities found in the State. These may include reforestation, especially along streams to control nonpoint source water pollution, protection of critical watersheds, or the development of green belts to enhance wildlife habitat and to increase recreational opportunities.

Paragraph (b)(2) requires the Committee to recommend to the State Forester the minimum contiguous acreage that a landowner must have to participate in the Program, not to exceed 25 acres. The intent of the 25-acre limitation is to ensure that small landowners have reasonable opportunity to participate in the Program.

Paragraph (b)(3) directs the Committee to identify those nationally approved practices that will be eligible for cost sharing within the State. These practices should reflect the State's specific resource needs and opportunities as identified in paragraph (b)(1) of this section.

Paragraph (b)(4) requires the Committee to recommend to the State Forester those technical practices and specifications that are needed to accomplish State goals and objectives. Given the diversity of forest types and associated forest management techniques required for successful implementation of Program practices throughout the nation, this flexibility is needed to meet Program goals within each State.

Paragraph (b)(5) requires the Committee to recommend to the State Forester cost-share levels for Program practices which will result in multiple resource benefits. The flexibility to establish cost-share levels on a State-by-State basis allows the States to set cost-share levels at a rate competitive with other existing federal financial assistance programs and thus encourage landowners to consider installation of practices deemed important to the State.

Paragraph (b)(6) requires the Committee to recommend the fixed rate of reimbursement or designated percentage of total cost for practice components. This value will be based on prices for labor and materials such as fertilizer, tree shelters, animal repellents, or artificial nest boxes and will be used to calculate cost-share payment to the landowner.

Paragraph (b)(7) directs the Committee to develop and recommend a distribution mechanism for the allocation of cost-share funds with the State. This allows States the flexibility to distribute funds directly to counties or

to pool funds at the State level for later disbursement.

Paragraph (b)(8) authorizes the State Forester to utilize the expertise of other agencies or individuals to provide technical assistance. For example, a State Fish and Wildlife agency may be assigned technical responsibility within a state for Wildlife Habitat Enhancement (SIP8).

Paragraph (b)(9) requires the State Forester to annually establish guidelines for setting priorities for approval of landowner applications. In establishing priorities, the State Forester must consider landowner objectives in light of national and State resource management goals and opportunities.

Paragraph (b)(10) requires the Committee to recommend to the State Forester the mechanisms for ensuring landowner compliance with practice specifications. This provision allows each State to determine a reasonable and prudent schedule for inspecting landowner accomplishments and for certifying satisfactory compliance.

Paragraph (b)(11) requires the Committee to recommend to the State Forester the mechanisms to monitor State participation in the Program. This provision is necessary to ensure State Programs are meeting State goals and objectives as identified in paragraph (b)(1).

Paragraph (b)(12) requires the Committee to identify and report to the State Forester any adjustments in Program guidelines, administration, or funding levels that will better achieve Program goals and objectives within the State. This provision allows for States to react to new information involving advances in forest research, economic trends, changes in public values, or unexpected natural events.

Paragraph (c) of this section authorizes the State Forester, after giving full consideration to the recommendations of the Committee, to approve Program administrative procedures as set forth in paragraph (b). In the event the Committee fails to make timely recommendations, the State Forester is authorized to approve administrative procedures without delay. This provision is intended only to ensure timely administration of the Program and is not intended to diminish the responsibility of the Committee to advise the State Forester on Program policy and procedure.

Paragraph (d) requires the State Forester, in consultation with the Committee, to establish a 5-year State Plan which provides baseline data on and outlines threats to the forest resources of the State as well as

addresses management problems, opportunities, and objectives associated with intermingled land ownerships, as specified in the Act. Paragraph (d)(2) allows State Foresters to use existing resource inventories and planning data in the development of the State plan.

Paragraph (e) assigns responsibility to the State Forester for State Program administration and monitoring, and for ensuring landowner compliance with practice installation specifications and maintenance of the practice.

Paragraphs (f) and (g) of this section further provide that the State Forester may request from the Regional Forester up to 10 percent of Program funds to use for Program administration and up to the allowable established percentage of Program funds to use for landowner forest stewardship plan development. This provision is necessary to ensure that States have funding capability to adequately implement and monitor the Program and ensures that States will have sufficient funds in the initial phase of Program implementation for the development of landowner forest stewardship plans.

Finally, paragraph (h) of this section requires the State Forester to make available for public inspection all determinations regarding the State Program.

Section 230.5 Eligibility Requirements

Paragraph (a) of this section makes clear that all landowners who otherwise meet eligibility requirements are eligible to participate in the Program, without regard to race, color, religion, national origin, age, sex, marital status, or handicap.

Paragraph (b) provides that to be eligible, a landowner must own 1,000 acres or less of nonindustrial private forest land except where the State Forester, with the concurrence of the Regional Forester, approves ownership of 5,000 acres or less. The maximum landowner acreage requirements are similar to those used in the administration of the Forestry Incentive Program. Although the average size of forest land holdings differs considerably among the geographic regions of 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 approval of landowners of over 1,000 acres but less than 5,000 acres will be based on the assessment of unique environmental attributes such as the opportunity to expand wildlife habitat, manage critical watersheds, or conduct extensive reforestation.

Paragraph (c) provides that minimum contiguous acreage limits will be set by each State Forester, but that no State may set a minimum contiguous acreage higher than 25 acres. As previously noted, the 25-acre limitation ensures that landowners of small woodlots will be eligible for participation in the Program. This section further stipulates that a landowner must agree to manage nonindustrial private forest land under a landowner forest stewardship plan and must maintain Program practices for 10 years unless otherwise specified by the Chief. This is a requirement of the Act and included in the rule to ensure that landowners are aware of all the statutory requirements governing Program participation.

Section 230.6 Landowner Forest Stewardship Plan

Paragraphs (a) and (b) of this section require a landowner to have an approved landowner forest stewardship plan, which will remain in effect for 10 years, prior to receiving approval for other Program practices. The landowner forest stewardship plan is intended to reflect the long-term management objectives of the landowner and should cover a planning horizon comparable to the life span of approved practices.

Paragraph (c) of this section authorizes the Service Representative to determine whether an existing landowner management plan meets or can be amended to meet the requirements of a landowner forest stewardship plan. This provision allows landowners to utilize and expand upon existing resource management plans, inventories, and surveys and to avoid unnecessary and costly redundant effort.

Finally, paragraph (d) of this section states that if the landowner sells or otherwise conveys land covered by a plan, the new landowner may agree to adopt the plan, whereupon such plan may be used to obtain approval of new Program practices. However, if the new landowner does not adopt the plan, the new landowner cannot obtain approval of new Program practices without preparation and approval of a new landowner forest stewardship plan. This provision provides flexibility and choice to new landowners while ensuring compliance with the basic requirement of the Act that all participants must have an approved landowner forest stewardship plan.

Section 230.7 Program Practices

This section authorizes nine national Program practices as required by the Act for which cost sharing is available, including landowner forest stewardship

plan development; reforestation and afforestation; forest and agroforest improvement; windbreak and hedgerow establishment, maintenance, and renovation; soil, water, riparian, and wetland protection and improvement; fish and wildlife habitat enhancement; and forest recreation enhancement. This section further stipulates that all practices must be carried out in accordance with existing laws and regulations and gives notice that anyone who carries out practices under the Program is responsible for obtaining appropriate and necessary legal documents.

Section 230.8 Application and Approval

Paragraph (a) of this section instructs landowners who wish to participate in the Program to contact the local office of the State Forester. The State Forester, or designee, will provide the landowner with the information necessary to make application for the Program.

Paragraph (b) of this section requires the State Forester, or designee, to make the landowner eligibility determinations and to approve Program practices. This process recognizes the broad authority and responsibility of the State Forester to administer the Program within the State.

Paragraph (c) cites the criteria upon which Program practices will be approved by the State Forester or such official as the State Forester may delegate. These criteria include verification of an approved forest stewardship plan, a determination of whether the practice is needed and feasible, and a determination that the practice is consistent with State funding priorities.

Paragraph (d) makes clear that applications will not be approved unless cost-share funds are available. This provision is necessary to avoid making future funding obligations that cannot later be honored due to lack of sufficient funds. This paragraph also makes clear that approval by the State Forester or designee constitutes agreement between the landowner and the United States to cost-share approved practices upon acceptable performance.

Paragraph (e) of this section requires that upon approval of practices, the Service Representative will prepare a practice project outline which describes the mandatory requirements of practice establishment and maintenance. The project outline will become incorporated in the landowner's forest stewardship plan and will constitute the basis for certification of practice completion. This project outline prepared by a Service

Representative is critical to ensure the technical adequacy of the conservation measures to be undertaken.

Section 230.9 Payment to Landowners

This section cites the conditions under which cost-share payments will be made to the landowner. These provisions are similar to the rules governing the Forestry Incentives Program and the Agricultural Conservation Program (7 CFR part 701) and provide prudent business practices to protect the United States government.

Paragraph (a) of this section requires the landowner to install a practice within eighteen months of approval of such practice unless factors beyond the control of the landowner prevent this, in which case, the Service Representative may grant an additional six month extension for completion of the practice.

Paragraph (b) makes clear that cost-share payment to the landowner is not made until the Service Representative certifies the practice has been completed in accordance with specifications agreed to. This section further states the Service Representative shall have the right of access to the landowner's property to inspect practices for the duration of the practice maintenance period.

Paragraph (c) of this section prohibits payment in excess of \$10,000 to any one landowner in any fiscal year. This payment limitation is established to ensure that the Program benefits a large number of landowners.

Paragraph (c)(1) states that a husband and wife holding joint ownership of non-industrial private forest land will be treated as a single landowner and subject to the maximum payment authorized by this rule. This is consistent with other treatment of common ownership as it applies to payment limitation under the Program.

Paragraph (c)(2) states that any number of individuals holding common ownership of nonindustrial private forest land will be treated as a single landowner and subject to the maximum payment authorized by this rule. This treatment ensures that the Program not only benefits a large number of landowners but that Program funding will be distributed over the greatest number of acres.

Paragraph (c)(3) prevents any individual engaged in an ownership interest involving two or more individuals, from receiving more than the maximum amount authorized by this rule. This paragraph also sets forth the basis for computing partner shares; for example, where a landowner consisting of a partnership between two individual participants in the Program, each equal

partner is eligible to receive up to 50 percent of the maximum allowable payment or no more than \$5,000.

Paragraph (d) of this section requires the State Forester to set cost-share levels paid to landowners at no more than 75 percent of the total cost of implementing Program practices, as required by the Act. However, non-federal program funds and other donated assistance may be used to supplement cost-share payments, but not to exceed 100 percent of the actual cost of practice implementation. This section further provides the procedure to be followed when making partial payment as well as making payment when a practice has failed due to no fault of the landowner.

In order to protect the government's investment in site preparation, paragraph (b) requires landowners to re-establish trees with the benefit of additional cost-share funding where landowners have, through no fault of their own, been previously unsuccessful in establishing trees.

Paragraph (h) of this section provides for the recapture of cost-share payments made by the United States government to a landowner if such landowner sells, conveys or otherwise loses control of lands. Where the new landowner does not agree to maintain the practice for the duration of the required maintenance period, the original landowner is liable to the United States government for the full value of cost-share payments.

Paragraph (j) of this section authorizes the landowner to assign the cost-share payment, in whole or part, to another private legal entity. This permits landowners to provide for direct payment to contractor or equipment vendors for practice installation.

Paragraph (j)(1) of this section requires that payments be assigned only for those costs directly related to establishing a Program practice.

Paragraph (j)(2) of this section prohibits the assignment of a Program payment to pay or secure any preexisting debt. This provision protects landowners from forfeiting payments due to outstanding indebtedness.

Paragraph (j)(3) of this section prohibits legal action against the Federal government, the Forest Service, the Secretary of Agriculture, or any disbursing agent where payment is made to the assignor rather than to the assignee or where payment is made to only one of several assignees. This provision is consistent with other Federal conservation programs regarding assignment of payment and is necessary to protect the Federal Government, the Forest Service, the

Secretary of Agriculture, or any disbursing agent from claims by assignees.

Finally, paragraph (k) of this section prohibits claims against all or part of a cost-share payment made under the Program arising under State law by any creditor, but authorizes claims against all or part of a cost-share payment made under the Program by the United States government. This provision is necessary to protect the Federal interest.

Section 230.10 Prohibitions

This section cites the provisions for which cost-share payment under the Program is not authorized. Paragraph (a) of this section provides that no cost-share funds will be paid for costs incurred before approval of an application, for the implementation of a practice already required by law, and for normal repairs or maintenance of a practice.

Paragraph (b) provides that no cost-share payment will be made to a landowner where a practice which has previously been installed under another assistance program is re-established on the same site by the same landowner, except where such practices are repeated due to a failure of a prior practice without the fault of the landowner. This provision protects previous conservation investments made by the United States government.

Section 230.11 Recapture of Payment

As required by the Act, this section delineates the procedures to be followed in the event a landowner fails to comply with the policies and procedures outlined in this interim rule. Paragraph (a) of this section requires that the United States government withhold cost-share funds or require the landowner, successor or assignee to refund all or part of any payment where a scheme or device has been used to benefit a landowner, successor or assignee unjustly or where a landowner, successor or assignee has failed to maintain a practice for the designated maintenance period.

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

Paragraph (c) gives notice that penalties or liabilities may be incurred by participating landowners who engage

in prohibited practices. The procedures of this section protect the United States Government from unjust actions and will be monitored and enforced by the State Forester.

Section 230.12 Reconsideration

This section establishes a procedure to be followed in the event a landowner is dissatisfied with a determination such as determining eligibility, practice feasibility, certification of completion of a practice, or any other determination made under the Program. The landowner may seek reconsideration in writing first from the State Forester and then, if not satisfied, from the Regional Forester.

Section 230.13 Information Requirements

This section complies with the Paperwork Reduction Act and identifies the information requirements contained in the rule, namely, the State forest stewardship plan, the landowner forest stewardship plan, the assignment of payment requirements of the Program, and the application requirements of the Program and displays the control number assigned by the Office of Management and Budget.

Public Comment

Pursuant to 5 U.S.C. 553(b)(3)(B), it is impracticable to provide notice and comment prior to adoption of this rule. Congress has directed implementation of the Stewardship Incentive Program in FY 1991 and has appropriated funds for this purpose. Further delay in adopting the rule will prevent installation of approved practices during the important fall field season. Adoption of the interim rule permits immediate distribution of appropriated funds to the States for Program implementation. The time required to attain public comment on a proposed rule, to consider that comment, and to adopt a final rule would not provide the States with sufficient time for planning and organizing cooperators to begin approving work for the fall.

Moreover, aware of Congressional funding action, many producers of tree seedlings and other plant materials have already increased their production levels and have stock on hand for the coming planting season. Much of this stock will be destroyed or disposed of at a loss if planting cannot begin this fall. Furthermore, nurseries need advance information on seedling and other plant material needs at the earliest possible date to plan their output levels for the following year. Therefore, good cause exists to make this rule effective without the benefit of prior public comment. However, comments are invited on the

interim rule and will be considered in adoption of a final rule.

Regulatory Impact

This interim rule has been reviewed under USDA procedures and Executive Order 12291 on Federal Regulations. It has been determined that this is not a major rule. The rule itself will not have an annual effect of \$100 million or more on the economy, substantially increase prices or costs for consumers, industry, or State or local governments, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets. Because the Program is national in scope and features an entire array of forest resources, it should have broad appeal and elicit widespread participation. It is anticipated that much of the Program will be concentrated in the Eastern United States where most of the private forest land and forest landowners are located and where the heaviest demands are placed on private forest lands. Limitations on the size of annual payments to individual participants, the maximum ownership size criteria, and the variety of approved program practices will serve to ensure that funds are well-distributed geographically within the area of heaviest demand and across business sectors.

The great majority of Program practices will be applied to enhance the productivity of existing forest lands and, to the extent that this does occur, these practices represent net additions to, rather than the displacement of, economic activities associated with other lands. Clearly, there will be increased activity in the forestry sector, including tree and other plant material production, sales, and distribution and further expansion of contractor vendors for tree planting and the installation of other conservation practices. Beyond this, there will be increased purchases of a variety of supplies and equipment such as tree seedlings, fertilizer, and seed for wildlife covers, which will be locally important. And in the years ahead, there should be increased economic activity associated with the use and consumption of increased forest products and greater recreational attractiveness attributable to the Program which will benefit landowners, State and local governments and economies, and the general public.

This interim rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and it has been determined that this Program will not have a significant negative impact on a substantial number of small entities as

defined by the Act. To the contrary, the Program will create new economic activity and opportunities in rural areas.

This interim rule has also been reviewed for its possible impacts on private property rights pursuant to Executive Order 12630, and it has been determined that the Stewardship Incentive Program will not have effects on private property rights since participation in the Program is purely voluntary and consensual on the part of participating landowners.

Paperwork Reduction Act

It should be noted that the content of a State Forest Stewardship Plan as required by § 230.4(d), a Landowner Forest Stewardship Plan as would be required by § 230.6, and the application requirements of § 230.8, of this interim rule represent new information requirements as defined in 5 CFR part 1320, Controlling Paperwork Burdens on the Public. In accordance with those rules and the Paperwork Reduction Act of 1980 as amended (44 U.S.C. 3507), the Forest Service has requested Office of Management and Budget review and approval of the information required. The agency estimates that each State Forester preparing a State plan will spend an average of 40 hours preparing and submitting the plan for Forest Service review and approval; that each individual landowner shall spend an average of 4 hours providing information to the Resource Management Professional for the development of a Landowner Forest Stewardship Plan for review and approval by the Service Representative and that landowners will spend an average of 25 minutes preparing applications for cost-share funding of practices under the rule.

The Office of Management and Budget has approved these requirements for use through February 25, 1992, and assigned them OMB Control No. 0596-0120. The agency intends to use several forms to administer the Stewardship Incentive Program. These forms are modifications of several existing approved forms currently used in the administration of the Forestry Incentives Program and the Agricultural Conservation Program. The new USDA forms would be SIP-245, used to complete an application for cost-share funds; SIP-36, used to assign cost-share payment to a third party; SIP-502, used to review payment limitation requirements; SIP-211, used to appoint power of attorney; SIP-211-1, used to appoint power of attorney for husband and wife; and SIP-1, used to make preliminary landowner eligibility recommendations. These new USDA forms have been approved for use and

also assigned OMB Control No. 0596-0120.

Reviewers who wish to comment on the information requirements in this rule should submit their views to the Forest Service at the address listed earlier in this document as well as to the:

Forest Service Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Environmental Impact

Based on environmental analysis, this interim rule will not have a significant effect on the human environment; therefore, an environmental impact statement was not prepared. Copies of the environmental assessment and finding of no significant impact may be obtained by writing or calling the persons and offices listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 36 CFR Part 230

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

Therefore, for the reasons set forth in the preamble, chapter II of title 36 of the Code of Federal Regulations is hereby amended by adding a new part 230, consisting of subpart A, to read as follows:

PART 230—STATE AND PRIVATE FORESTRY ASSISTANCE

Subpart A—Stewardship Incentive Program

Sec.

- 230.1 Purpose and scope.
- 230.2 Definitions.
- 230.3 National program administration.
- 230.4 State program administration.
- 230.5 Eligibility requirements.
- 230.6 Landowner forest stewardship plan.
- 230.7 Program practices.
- 230.8 Application and approval.
- 230.9 Payment to landowners.
- 230.10 Prohibitions.
- 230.11 Recapture of payment.
- 230.12 Reconsideration.
- 230.13 Information requirements.

Authority: 16 U.S.C. 2103b, 2114.

Subpart A—Stewardship Incentive Program

§ 230.1 Purpose and scope.

(a) The regulations in this subpart govern the operation of the Stewardship Incentive Program as provided in section 6 of the Cooperative Forestry Assistance Act, as amended by title XII of the Food, Agriculture, Conservation, and Trade Act of 1990 (16 U.S.C. 2101, *et seq.*). This subpart sets forth the rules and procedures by which the Stewardship Incentive Program will be

administered by the Forest Service to establish forest stewardship practices on nonindustrial private forest land.

(b) The cost-share assistance provided under the Stewardship Incentive Program shall complement rather than replace or duplicate the existing Agricultural Conservation Program and Forestry Incentives Program. Tree planting and improvement and other State priorities for program activities and practices funded under the Stewardship Incentive Program shall be designed to provide multiple resource benefits not available through other cost-share programs.

§ 230.2 Definitions.

As used in this subpart, the following terms shall mean:

Act means the Cooperative Forestry Assistance Act as amended (16 U.S.C. 2101, *et seq.*).

Assignee means any person, corporation, government agency, or other legal entity to whom a landowner transfers legal rights to receive all or part of federal cost-share payments.

Chief means the Chief of the Forest Service.

Committee means the State Forest Stewardship Coordinating Committee established pursuant to section 19(b)(1) of the Act.

Fiscal year means the fiscal year of the United States Government which is October 1 through September 30.

Landowner 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.

Nonindustrial private forest land means rural lands with existing tree cover or which are suitable for growing trees and owned by any landowner as defined in this subpart.

Practice means a stewardship activity or conservation measure consistent with the landowner plan to accomplish the landowner's desired management objectives.

Program means the Stewardship Incentive Program.

Regional Forester means the Forest Service official charged with the administration of a Region of the National Forest System as described in 36 CFR 200.2, except that with reference to the States covered by the Eastern Region, such term shall mean the Area Director for States and Private Forestry, Northeastern Area (36 CFR 200.2);

Resource Management Professional means any person who is recognized by the State Forester as having the

knowledge and skills to develop landowner plans for managing the biological, economic, and environmental interrelationship of forest resources and to identify appropriate activities to manage, protect, or enhance forest resources including, but not limited to, an employee of a State forestry agency, other State resource agency, the Soil Conservation Service, a consulting forester, or wildlife biologist.

Service Representative means a resource management professional designated by the State Forester to perform any or all of the following technical assistance functions: Review and approval of landowner plans, determination of need and feasibility of practices, establishment of site specific practice specifications, certification of completion of practices and performance of compliance checks pursuant to this subpart.

State means any one of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the North Marianas Islands, the Trust Territory of the Pacific Islands and the Territories and possessions of the United States.

State Forester means the employee of a State responsible for administration and delivery of forestry and assistance within such State.

USDA means the U.S. Department of Agriculture.

§ 230.3 National program administration.

(a) The Chief shall develop and oversee all Program policy and procedure and monitor the implementation of such policy and procedure over the life of the Program.

(b) The Chief shall annually distribute among the States such cost-share funds as may be available for the Program after addressing the public benefit incidental to such distribution and after giving appropriate consideration to the following: The total acreage of nonindustrial private forest land in each State, the potential productivity of such land, the number of owners eligible for cost sharing in each State, the need for reforestation in each State, the opportunities to enhance nontimber resources on such forest lands, and the anticipated demand for timber and nontimber resources in each State. In making distributions under this paragraph, the Chief shall consult with a group of not less than five State Foresters selected by a majority of the State foresters.

(c) Tree planting, tree maintenance, and tree improvement are national

priorities for cost-share practices under the Programs. In addition to these practices, the Chief, in consultation with the State Foresters, may develop other national priorities for practices to be cost shared under the Program and shall communicate such priorities to guide administration of the Program.

(d) The Chief shall review and determine approval of State plans, including any revisions of such plans.

(e) The Chief, in consultation with the State Foresters, shall annually reevaluate and set the percentage of Program funding to be made available for landowner forest stewardship plan development (§ 230.7(a)(1) of this subpart).

(f) The Chief may enter into such agreements with any other USDA agency as are necessary to administer the Program. These agreements may include provisions authorizing the collection of Program participant information, the management of accounting ledgers, and the disbursement of payment to participants.

(g) The Chief shall retain final authority to resolve all issues which may arise in the administration of the Program.

§230.4 State program administration.

(a) In each State participating in the Program, the Secretary of Agriculture, in consultation with the State Forester, shall establish a State Forest Stewardship Coordinating Committee whose composition meets the requirements of section 19(b) of the Act. The Committee shall be chaired by the State Forester, or the designee thereof.

(b) In each State participating in the Program, the Committee shall recommend to the State Forester for approval:

(1) Stewardship Incentive Program needs within the State;

(2) The minimum contiguous acreage of eligible nonindustrial private forest land, consistent with § 230.5(c) of this subpart;

(3) Those nationally approved practices that will be eligible for cost-share assistance within the State;

(4) Those nationally approved technical practices and minimum specifications to be used in implementing practices;

(5) The cost-share levels, by practice, which will encourage tree planting, maintenance, and improvement, and other high priority practices within the State that will result in multiple resource benefits;

(6) The fixed rate or reimbursement or designated percentage of total cost for practice components;

(7) The distribution mechanism for the allocation of cost-share funds within the State;

(8) The assignment of technical responsibility, by type of Program practice, to the appropriate Service Representative;

(9) Guidelines for establishing annual priorities for the approval of landowner applications;

(10) The mechanisms for ensuring landowner compliance with practice specification;

(11) The mechanisms to monitor State participation in the Program; and

(12) Any adjustments in Program guideline, administration, or funding levels to better achieve Program objectives within the State.

(c) The State Forester, after giving full consideration to the recommendations of the Committee, shall approve Program administration procedures as set forth in paragraph (b) of this section. In the event a Committee fails to make timely recommendations with regard to any matter listed in paragraph (b) of this section, the State Forester is authorized to approve administrative procedures for implementing the Program without further delay.

(d) To participate in the Program, the State Forester, in consultation with the Committee, shall develop a State plan that shall provide baseline data on the forest resources of the State; outline threats to the forest resources of the State; describe economic and environmental opportunities that are linked with the forest resources of the State; address management problems, opportunities, and objectives associated with intermingled Federal, State, and private land ownership patterns within the State; and make planning recommendations for Federal, State, and local implementation of the Act.

(1) The State Plan shall cover a 5-year period, identify management goals for nonindustrial private forest lands and set priorities for achieving the goals and objectives identified for the State for each year.

(2) State Foresters may use existing resource inventories, landowner surveys, and other relevant planning data to develop the State plan.

(3) State plans shall become effective upon approval by the Chief.

(e) The State Forester shall administer the Program within the State and monitor the Programs to ensure that it is achieving desired results and shall ensure landowner compliance with practice installation specifications and maintenance of the practice.

(f) Not more than 10 percent of a State allocation of funds may be used to finance State Program development and

administration. The State Forester must obtain approval from the Regional Forester of the amount of the State's Program allocation to be used for State Program development and administration.

(g) The percent of the State's Program allocation of funds that may be used to cost-share the development of Landowner Forest Stewardship plans will be determined pursuant to § 230.3(e) of this subpart. The State Forester must obtain approval from the Regional Forester of the amount of the State's Program allocation to be used for Landowner Forest Stewardship Plan development (§ 230.7(a)(1) of this subpart).

(h) The State Forester shall document and make available for public inspection all determinations made in consultation with the Committee.

§ 230.5 Eligibility requirements.

(a) All nonindustrial private forest landowners as defined in § 230.2 of this subpart, 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.

(b) To be eligible to receive cost-share funds under the Program, a landowner shall own not more than a total of 1,000 acres of nonindustrial private forest land, except where the State Forester, with the concurrence of the Regional Forester, determines that significant public benefits would accrue from approval of a landowner owning not more than 5,000 acres. In making a determination of significant public benefits, the State Forester and the Regional Forester shall consider, at a minimum, whether the installation of practices by landowners who own more than 1,000 acres but less than 5,000 acres are necessary to achieve cost-effective resource management objectives without unduly affecting Program participation of other eligible landowners.

(c) To be eligible to receive cost-share funds under the Program, a landowner shall not own less than the minimum contiguous acreage as established by the State Forester. However, in no case shall the minimum contiguous acreage requirement be higher than 25 acres.

(d) To be eligible to receive cost-share funds under the Program, a landowner must agree to manage the following lands under a Landowner Forest Stewardship Plan prepared pursuant to § 230.6 of this subpart:

(1) All of their nonindustrial private forest land with existing tree cover within a contiguous tract; and

(2) Other nonindustrial private forest land within the same contiguous tract which is identified by the landowner and approved by the Service Representative as suitable for growing trees and scheduled for conversion to a Program practice.

(e) To be eligible to receive cost-share funds under the Program, a landowner must agree to maintain Program practices for 10 years, unless otherwise specified by the Chief.

§ 230.6 Landowner forest stewardship plan.

(a) Prior to receiving approval to implement any Program practice identified in § 230.7(a)(2)-(9) of this subpart, eligible landowners shall have an approved landowner forest stewardship plan. The landowner forest stewardship plan shall be prepared by a Resource Management Professional and approved by a Service Representative and shall identify and describe actions to be taken by the landowner to protect and manage soil, water, aesthetic qualities, recreation, timber, and fish and wildlife resources in a manner which is compatible with the objectives of the landowner.

(b) A landowner forest stewardship plan shall be effective for not less than 10 years, but shall be reviewed at least every five years and may be revised as needed, subject to approval of the Service Representative.

(c) To the extent deemed applicable by the Service Representative, where existing landowner management plans such as conservation plans, Tree Farm management plans, or similar plans meet or can be amended to meet Landowner Forest Stewardship Plan requirements, such plans shall satisfy the requirements of this section.

(d) If a landowner sells or otherwise conveys land covered by a landowner forest stewardship plan, such plan shall remain in effect if agreed to by the new owner. New landowner objectives shall be incorporated through plan revision as needed. Where the new landowner does not agree to adopt the Landowner Forest Stewardship plan, the new landowner cannot obtain approval of new Program practices without preparation and approval of a new Landowner Forest Stewardship Plan.

§ 230.7 Program practices.

(a) Practices for which cost sharing is available under the Stewardship Incentive Program and the reporting codes assigned to each are as follows:

(1) Landowner Forest Stewardship Plan Development (SIP1), which identifies landowner objectives and multiple resource management decisions.

(2) Reforestation and Afforestation (SIP2), which includes establishment or reestablishment of diverse stands of forest trees through natural regeneration, planting, or direct seeding for conservation purposes and sustainable timber production.

(3) Forest and Agroforest Improvement (SIP3), which includes the improvement of forest and agroforest stand productivity, vigor, and health, and the value and quality of wood products.

(4) Windbreak and Hedgerow Establishment, Maintenance and Renovation (SIP4), which includes the establishment, maintenance, and renovation of windbreaks and hedgerows to conserve energy, protect farmsteads, livestock, and crops, and reduce soil erosion.

(5) Soil and Water Protection and Improvement (SIP5), which includes the maintenance or improvement of water quality and soil productivity on forest land.

(6) Riparian and Wetland Protection and Improvement (SIP6), which includes the protection, restoration, and improvement of wetlands and riparian areas to maintain water quality and enhance habitat.

(7) Fisheries Habitat Enhancement (SIP7), which includes the protection and enhancement of habitat for native resident and anadromous fisheries.

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

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

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

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

§ 230.8 Application and approval.

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

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

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

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

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

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

(d) Applications shall not be approved unless cost-share funds are available. Approval of an application shall constitute an agreement by the United States and the landowner to cost-share approved practices upon acceptable performance.

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

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

§ 230.9 Payment to landowners.

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

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

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

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

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

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

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

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

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

(1) The landowner repeats applications of components previously implemented or establishes additional eligible components under such terms and conditions as the Service Representative may require, in which

case, the State Forester shall approve additional cost-sharing for additional or repeated components to the extent such measures are needed to meet the objectives of the landowner forest stewardship plan; or

(2) The landowner establishes to the satisfaction of the Service Representative that:

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

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

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

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

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

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

(1) Payments may be assigned only for performance of a Program practice.

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

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

(k) No cost-share payment or portion thereof due and owing any landowner shall be subject to any claim arising under State law by any creditor, except agencies of the United States Government.

§ 230.10 Prohibitions.

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

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

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

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

(b) No cost-share assistance shall be paid for repeating practices on the same site by the same landowner which have been implemented under the Forestry Incentives Program (16 U.S.C. 2104) or any other Federal, State, or local government programs, or private sector programs, except where such practices are repeated due to a failure of a prior practice without fault of the landowner.

§ 230.11 Recapture of payment.

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

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

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

§ 230.12 Reconsideration.

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

§ 230.13 Information requirements.

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

Dated: November 6, 1991.

James R. Moseley,

Assistant Secretary, Natural Resources and Environment.

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Part VI

Department of Agriculture

Food and Nutrition Service

2 CFR Part 201 of the
Food Stamp Program, Revised
Administrative Order, dated
12-3-91, and amendments of Food Stamp
Program