



NATIONAL ASSOCIATION OF STATE FORESTERS

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December 10, 2020

Attention: Steven Koehn
Director of Cooperative Forestry
USDA Forest Service
State and Private Forestry
1400 Independence Ave SW
Washington, DC 20250-1124

Document Citation: 85 FR 73017 Document Number: 2020-25233

The National Association of State Foresters (NASF) is pleased to provide official comments on the proposed directive published November 16th in the Federal Register regarding the implementation of the State and Private Forestry (S&PF) Landscape Scale Restoration (LSR) program, created by section 8102 of the Agricultural Improvement Act of 2018 (Pub. L. 115-334 (December 20, 2018)) (2018 Farm Bill).

NASF represents the directors of the forestry agencies in all 50 states, eight U.S. territories, and the District of Columbia. Prior to the codification of LSR, and consistent with the proposed directive, state foresters have been responsible for providing management and oversight of LSR implementation within their states. For more than a decade, state foresters and their agencies have employed LSR to achieve national forestry program objectives and state priorities detailed in state Forest Action Plans.

NASF works hand-in-hand with the three regional state forester organizations: the Council of Western State Foresters (CWSF), the Northeast-Midwest State Foresters Alliance (NMSFA), and the Southern Group of State Foresters (SGSF). Historically, and per the proposed directive, these regional groups have been charged with administering LSR. Their duties have included developing and issuing a Request for Proposals (RFP) or Request for Applications (RFA), establishing a grant review team with multi-agency representation, coordinating evaluation of cross-regional project proposals, and submitting the rankings of the project proposals to the Deputy Chief for S&PF and Deputy Area Budget Coordinator for consideration upon completion of the review process.

Given the importance of LSR in furthering priorities identified in state Forest Action Plans and the extensive role state forestry agencies and the regional state forester organizations play in administering LSR, NASF offers the following insights in response to the USDA Forest Service's (Forest Service) request for comment:

3804.2(3) – Regional Foresters

NASF recommends clearly establishing a point of contact in each Forest Service region for responding to issues/questions posed by tribal stakeholders, as well as for the handling and processing of applications submitted by tribes. The regional state forester associations know from

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Jay Farrell

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experience that designating a point of contact for each Forest Service region is necessary to administrating LSR effectively, particularly in the West which includes seven Forest Service regions. Clearly establishing these contacts assists in processing tribal applications submitted under the procedure outlined in section 3807.3(2). It also enables applicants to seek guidance during the project development phase as encouraged in section 3807.3(3) and receive responses to their questions related to field-specific guidance on federal grants and agreements requirements.

3805 – Definitions – Non-industrial private forest land (NIPF): “Is rural (as defined in this section); has existing tree cover or is suitable for growing trees; and is owned by: any private individual, group, association, corporation, or other private legal entity, except a landowner or legal entity whose major objective for ownership is commercial timber production, or an Indian Tribe.”

We recommend removing “except a landowner or legal entity whose major objective or ownership is commercial timber production,” from the definition of NIPF to match the 2018 Farm Bill language. While we appreciate the Forest Service’s intention to provide greater clarity to applicants on what lands are eligible and ineligible based on ownership, the addition of this clause may have unintended consequences for otherwise eligible and worthwhile projects.

As an example: LSR proposals must align with landscape priorities named in a state Forest Action Plan and the other objectives outlined within the guidance. If a project proposal includes land used for commercial timber production and meets all of the other LSR application requirements – including strategies for making measurable landscape-scale improvements in line with a Forest Action Plan as Congress intends – there should be no rationale for exclusion.

Furthermore, this clause does not align with Congress’ intention set out in the LSR authorization or the Cooperative Forestry Assistance Act (CFAA). Within the authorizing language for LSR, a condition within eligibility requires a restoration strategy to be “accessible by wood-processing infrastructure.” The inclusion of this condition clearly expresses Congress’ intent to ensure eligibility for projects with timber production components. The proposed definition would undermine that intention.

The CFAA, wherein LSR is codified, identified “encouragement of timber production” among the purposes of the Act in its preamble (Sec. 2b PURPOSE). Further support for not precluding land owned by timber producers as eligible lands based on the CFAA can be found within:

- Sec. 3(a)(10) RURAL FORESTRY ASSISTANCE (RFA) which specifies Secretarial assistance for management of forest resources to include harvesting, processing and marketing timber; utilization of wood products; site preparation, thinning and other silvicultural practices; management to sustain long-term resource productivity; and, encouraging investment of proceeds from timber sales to enhance forest land. RFA is one of the program authorities through which the LSR program has to be delivered (3806.22 – 4); and
- Sec. 5(d)(1) FOREST STEWARDSHIP PROGRAM (FSP) providing Secretarial authority to state foresters to manage and enhance production of timber. Moreover, Sec. 5(c) provides a definition for “nonindustrial private forest lands” without qualification or limits

regarding commercial timber production. FSP is one of the program authorities through which the LSR program has to be delivered (3806.22 – 4).

In addition to the language within the 2018 Farm Bill, the 2008 Farm Bill (PL 110 Sec. 2001(d)(18)) incorporates the same definition for non-industrial private forest land (NIPF) as contained in CFAA-Forest Stewardship Program and the 2018 Farm Bill. The authorization for Emergency Forest Restoration Program (Sec. 8203) also utilizes identical definition language; and the authorizations for the Environmental Quality Incentives Program and Cooperative Conservation Partnership – both included in the 2008 Farm Bill – contain the same references to NIPF. In summary, the host of relevant and related existing authorities all contain NIPF definitions that do not match or support the inclusion of this added language for LSR.

3805 – Definitions – Rural: “Any area other than an urbanized area, as currently defined by the United States Census Bureau, such as a city or town that has a population of greater than 50,000 inhabitants according to the latest U.S. Census.”

We propose replacing the definition for “rural” with the following text: “those areas consistent with the authorities defined for assistance to forest landowners and others in 16 USC 2102(a).” For one, we recommend that “rural” be defined by what it is, not by what it’s not (“urban”). Additionally, since Congress codified LSR under the broad authorities of the Cooperative Forestry Assistance Act (CFAA), it is most appropriate to use the CFAA definition of “rural,” which aligns with our proposed definition.

We can also understand what Congress expects when it directs programs into “rural” areas by referencing the authorization for Rural Forestry Assistance (16 USC 2102), one of the authorities through which LSR is intended to be delivered (3806.22 – 4). Importantly, that authorization does not define “rural” in terms of population, but rather as a *constituency* that includes “private forest landowners and managers, vendors, forest resource operators, forest resource professionals, public agencies, and individuals [16 USC 2102(a) ASSISTANCE TO FOREST LANDOWNERS AND OTHERS].” Here Congress is describing “rural” in terms of ownership and constituencies associated with ownership; this intention applied to LSR would surely convey eligibility to all localities where those ownerships exist.

3806.22(2)g – Project Objectives: “A project proposal must be designed to achieve one or more of the following objectives: Take other actions as determined by the Forest Service.”

We recommend replacing “Take other actions” with “Achieve other objectives.” This section resembles the ‘Plan Criteria’ in section 8101(e) of the 2018 Farm Bill, but with a noticeable change: “criteria” is now “objectives.” While (a)-(f) in this section qualify as objectives, section (g)’s “Taking other actions” does not.

3806.23 – Projects to be given priority: “Priority *must* be given to selecting proposals that.”

We recommend listing (1) leveraging resources and (2) cross-boundary collaboration as “required” elements and retaining the other elements as “encouraged” to match the language of the 2018 Farm

Bill. The proposed language may result in unintentionally excluding a project that aligns well with state or regional priorities.

3806.24(2) – Matching Requirements – Exception: “The Virgin Islands of the United States; The Commonwealth of the Northern Mariana Islands; The Federated States of Micronesia; The Republic of the Marshall Islands; The Republic of Palau.”

We recommend amending the match waiver section to include the Territories of American Samoa and Guam to reflect the statutory match waiver. The Territories of American Samoa and Guam are not included within the list of territories, flag islands, and freely associated States of the United States for which the 1:1 match requirement for a grant of \$200,000 or less is waived. The waiver of a matching requirement was first enacted in 1980 (Public Law 96-205) which included the Territory of American Samoa. Later amendments in 1983 and 1984 to the underlying law increased the waived amount to \$200,000 (Public Law 98-213, Sec. 6) and added the Territory of Guam (Public Law 98-454, title VI, Sec. 601(b)).

3807.2 – Contents of Project Proposals: “While a project proposal may include a component of outreach, education and training as a means to achieve the project objectives, education and outreach should not be the sole project outcome.”

We recommend removing the prohibition on education and outreach focused projects to allow the project evaluation criteria to work as designed; for at present, any education- and outreach-focused projects that cannot deliver measurable results on the ground are precluded from funding.

Current proposed fiscal year 2021 appropriations report language directs LSR funds to “be focused on State and national priority projects that have significant, measurable impact on these *priorities*.” This shows no congressional intent to preclude projects that may use outreach, education, and training as a means of achieving measurable impacts on those priorities.

3807.3(1) – Submission of Project Proposals: “Except as provided in paragraph 2, an applicant shall submit a project proposal to the Regional State Forester Organization as required by the RFP or RFA.”

We recommend replacing “shall submit a project proposal to the Regional State Forester Organization as required by the RFP or RFA” with either (1) “shall submit a project proposal through the manner and process outlined by the regional RFP or RFA” or (2) “shall submit a project proposal through the relevant regional competitive process managed by CWSF, NMSFA, and SGSF” to alleviate confusion for applicants.

Previous guidance language instructed applicants to submit applications through the relevant regional processes; this language more accurately reflects the proper way to submit applications. Northeast-Midwest located applicants are to submit applications directly into the ezFedGrants system after acquiring a support letter from the relevant state forestry agency. Applicants located in the West and South apply primarily through the state forestry agency and proposals are then submitted into the regional grant portal administered by the regional state forester organizations.

This proposed change in language may have the unintended consequence of confusing applicants, particularly newly eligible applicants.

We thank you for the opportunity to provide public comments and look forward to continuing our strong partnership in implementing the LSR grant program.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joe A. Fox". The signature is stylized with a large, sweeping initial "J" and "F".

Joe Fox
NASF President
Arkansas State Forester