



NATIONAL ASSOCIATION OF STATE FORESTERS

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January 15, 2021

Kevin Norton
Acting Chief, USDA Natural Resources Conservation Service
1400 Independence Ave SW, Room 6149-S
Washington, DC 20250

Docket: NRCS 2020-0009, FR 2020-27703 Guidance for Identification of Non-industrial Private Forest Land

Dear Acting Chief Norton,

The National Association of State Foresters (NASF) is pleased to provide comments in response to the Natural Resources Conservation Service's (NRCS) December 17, 2020 Federal Register notice of proposed guidance for identifying non-industrial private forest land (NIPF).

NASF members are the directors of forestry agencies in all 50 states, eight U.S. territories, and the District of Columbia. Among state foresters' most important constituents are NIPF owners, hence our vested interest in any proposed changes to the definition of NIPF or proposed guidance for identifying NIPF for program eligibility.

The term "NIPF" first appeared (without definition) in section 4(a) of the Cooperative Forestry Assistance Act of 1978 (CFAA), Pub. L. 95-313. The 1990 Farm Bill (short for the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101-624) established a definition for NIPF that has since appeared 50 times in the last five Farm Bills and is still consistently used by Congress today, 30 years later. The intent of the definition has always been clear: to identify and exclude from eligibility those forest lands owned by vertically-integrated timber companies that use those lands to supply their mills. As the number of vertically integrated timber companies has substantially declined in the past 30 years, it now appears with this proposal that NRCS has decided to repurpose the definition of NIPF for other unclear policy objectives.

Despite recent discussions with both NRCS and the USDA Forest Service (USFS), NASF has not been able to identify any issues that would necessitate a new definition and/or guidance for identifying NIPF. Likewise, state foresters maintain strong partnerships throughout the country – ranging from private land owners and public forest managers to officials in Washington, D.C. – and have never heard any concerns regarding the longstanding definition of NIPF, nor has the Joint Forestry Team, which is composed of representatives from NRCS, USFS, NASF, and the National Association of Conservation Districts (NACD). Congress' definition for NIPF – used consistently for three decades by USDA – has worked well in the implementation of both NRCS and USFS programs.

Changes to the guidance for identifying NIPF or to the definition of NIPF would have broad ramifications, including effects on state landowner assistance programs. NASF strongly encourages NRCS to work collaboratively within the Joint Forestry Team to better understand the effects of such a proposal. NASF would also recommend that any proposed changes be considered under Farm Bill reauthorization to

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Jay Farrell

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ensure that forestry and conservation stakeholders are able to make a thorough assessment and Congress has the chance to clarify intent. Finally, NASF would caution finalizing any proposed changes during a presidential transition.

In regards to the proposed changes, NASF respectfully offers the following comments:

1. The USFS Forest Inventory and Analysis (FIA) definitions referenced in the proposed guidance are descriptions created by researchers for standardizing data sets; it would be inappropriate for NRCS to use these definitions to restrict program eligibility. Grouping landowners into discrete categories – like these FIA definitions do – might be helpful to statisticians, but it offers little practical value on the ground. This is because there is no functional difference between a landowner with 45,000 acres and one with 45,001 acres. Establishing a threshold for eligibility, such as “landowners of 45,000 acres or fewer,” is arbitrary. Arbitrary thresholds may encourage landowners to break their land holdings into smaller parcels to maintain program eligibility, which in turn could contribute to forest land fragmentation and potentially lead to losses in wildlife habitat and working forests.

Even more likely, arbitrary thresholds like these would undermine long-term, landscape-scale forestry conservation and restoration work that our state forester members are engaged in, as large landowners are critical to realizing the cross-boundary, landscape-scale conservation benefits. In Alaska for example, NRCS has worked in partnership with many of the Alaska Native Corporations to achieve far-reaching conservation outcomes. The majority of these native corporations own 45,000 acres or more. Under the proposed acreage cap, all Alaska Native Corporations over 45,000 acres would be considered “industrial” and ineligible for continued participation in NRCS conservation programs.

2. The proposed eligibility restrictions for forest landowners go beyond the restrictions placed on other agricultural producers participating in NRCS conservation programs. All producers, both agricultural and forestry, are subject to Adjusted Gross Income (AGI) limits, maximum payment limits, and other qualifiers for participation in each of these programs as dictated by Congress. NRCS has not made any argument in this proposal as to why the eligibility of forest landowners needs to be further qualified beyond that of other producers or congressional intent.

3. The proposed guidance would create inconsistencies in the State Technical Committees' application of the definition nationwide. NASF is particularly concerned that the eligibility for portable sawmills and/or lands associated with small family-owned sawmill businesses would be determined at the discretion of each State Technical Committee, in turn creating certain confusion for these applicants.

NASF firmly believes this proposal does a disservice to forestry and conservation efforts nationwide. Recent attempts, including this one, by USDA to change NIPF definitions and guidance have been inconsistent, unnecessary, and lacking in clarity and justification. NASF continues to be dissatisfied with USDA’s lack of engagement with forestry and conservation stakeholders and remains frustrated by its agencies’ failure to convey what problem(s) they seek to solve with this proposal. No issues related to identifying NIPF have been raised by NRCS or USFS at Joint Forestry Team meetings, and this administration has chosen not to conduct any business through the congressionally chartered Forest Resource Coordinating Committee that would ordinarily review a proposal like this one.

We request NRCS withdraw this notice of proposed guidance for identifying NIPF. We encourage NRCS to continue consultation with the forestry and conservation community regarding any program

implementation issues related to NIPF and ask that USDA allow Congress to exercise its authority in setting NIPF eligibility for NRCS and USFS programs through future Farm Bills.

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