

(1) The manufacturer's address and contact information;

(2) A detailed explanation of the purpose for the modification;

(3) A detailed description of the modification, including a statement as to whether the modification involves adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive;

(4) A detailed explanation of why the modification is a minor modification of a tobacco product that can be sold under the Federal Food, Drug, and Cosmetic Act;

(5) A detailed explanation of why a report under section 905(j)(1) of the Federal Food, Drug, and Cosmetic Act intended to demonstrate substantial equivalence is not necessary to ensure that permitting the tobacco product to be marketed would be appropriate for protection of the public health;

(6) A certification (i.e., a signed statement by a responsible official of the company) summarizing the supporting evidence and providing the rationale for the official's determination that the modification does not increase the tobacco product's appeal to/use by minors, toxicity, or addictiveness/abuse liability; and

(7) Other information justifying an exemption.

(c) *Exemption determination.* FDA will review the information submitted and determine whether to grant or deny an exemption request based on whether the criteria in section 905(j)(3) of the Federal Food, Drug, and Cosmetic Act are met. FDA may request additional information if necessary to make a determination. FDA will consider the exemption request withdrawn if the information is not provided within the requested timeframe.

(d) *Rescission of an exemption.* FDA may rescind an exemption if it finds that the exemption is not appropriate for the protection of public health. In general, FDA will rescind an exemption only after notice and opportunity for a hearing under 21 CFR part 16 of this chapter is provided. However, FDA may rescind an exemption prior to notice and opportunity for a hearing under 21 CFR part 16 of this chapter if the continuance of the exemption presents a serious risk to public health. In that case, FDA will provide the manufacturer an opportunity for a hearing as soon as possible after the rescission.

Dated: January 3, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011-34 Filed 1-5-11; 8:45 am]

**BILLING CODE 4160-01-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 230

RIN 0596-AC84

### Community Forest and Open Space Conservation Program

**AGENCY:** Forest Service, USDA.

**ACTION:** Proposed rule, request for comments.

**SUMMARY:** Public comments are solicited for this proposed rule which implements the Community Forest and Open Space Conservation Program (CFP) authorized by Section 8003 of the Food, Conservation, and Energy Act of 2008. The CFP legislation is an amendment to the Cooperative Forestry Assistance Act of 1978. The CFP is a competitive grant program whereby local governments, Tribal Governments, and qualified non-profit organizations are eligible to apply for grants to establish community forests. The program's two purposes are to assist communities in acquiring forestland that would provide public recreation, environmental and economic benefits, and forest-based educational programs, and to protect forestland that has been identified as a national, regional, or local priority for protection. Existing provisions in Forest Service regulations pertaining to the Stewardship Incentive Program will be removed as deauthorized by the Farm Security and Rural Investment Act of 2002, and this proposed rule will be substituted in lieu thereof.

**DATES:** Comments must be received in writing by March 7, 2011 Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this proposal must be received by March 7, 2011.

**ADDRESSES:** Written comments concerning this notice should be addressed to Community Forest Program, U.S. Forest Service, State and Private Forestry, Cooperative Forestry, 1400 Independence Avenue, SW., Code 1123, Washington, DC 20250. Comments may also be sent via email to [communityforest@fs.fed.us](mailto:communityforest@fs.fed.us), or via facsimile to (202) 205-1271. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at U.S. Forest Service, 1400 Independence Avenue, SW., Code 1123, Washington, DC 20250. Those wishing to inspect

comments are encouraged to call ahead to (202) 205-1389 to facilitate entry to the building.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0596-New, the docket number, date, and page number of this issue of the **Federal Register**. Comments should be sent to the address listed in the above paragraph.

**FOR FURTHER INFORMATION CONTACT:**

Maya Solomon, U.S. Forest Service, State and Private Forestry, Cooperative Forestry, (202) 205-1376. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

**Background and Need for Proposed Rule**

Congress authorized the Community Forest and Open Space Conservation Program (hereafter "CFP") to address the needs of communities to protect and maintain their forest resources. In the CFP authorization, Congress found that people derive health benefits from having access to forests for recreation and exercise. Congress also found that forests protect public water supplies and may provide financial benefits from forest products. The CFP is a competitive grant program whereby local governments, Tribal Governments, and qualified non-profit organizations are eligible to apply for grants to establish community forests through fee-simple land acquisitions. "Fee-simple" means full ownership and acquisition of real property, versus a partial interest such as conservation easement. By creating community forests through land acquisition, communities and Tribes can sustainably manage forests for these and many other benefits, including wildlife habitat, stewardship demonstration sites for forest landowners, and environmental education.

While the CFP title includes the term "open space," the authorizing language does not discuss the term. The only land cover Congress references is "forests." As a result, in this proposed rule, the term "open space" is also not used, and is assumed that the only type of "open space" on which Congress wanted CFP to focus is "forests."

The Forest Service believes that these proposed regulations for CFP will facilitate administration of the program and provide uniform criteria for program participation. The program will

focus its funding to forests that provide community benefits as defined in this proposed rule that are identified as a national, regional, or local priority for protection. See Ranking Criteria and Proposal selection in § 230.5 of this proposed rule. The Agency welcomes comments on national, regional, and local conservation priorities for selection of proposals.

Tribal consultation was initiated on October 20, 2010, and is currently ongoing. No tribal input has been received during the initial 60-day period. Consultation will continue during the 60-day public comment period.

### **Complementary to Other Cooperative Forestry Assistance Act Programs**

The Cooperative Forestry Assistance Act of 1978 (CFAA) enables the Forest Service to work with States, private landowners, and communities to address the full range of forest resources from urban street trees to large rural timber lands. The design and delivery of most Cooperative Forestry programs is influenced by the priorities of State resource agencies regarding urban, suburban or rural forests.

The CFP recognizes that successful protection of community forests depends on engaged citizens. Their participation is equal in importance to the type of forests being protected. The CFP complements and builds upon other CFAA programs that focus on stewardship and education by providing the opportunity for some communities to go a step further and directly acquire and manage forests. Because the CFP provides grant assistance directly to Tribal Governments, local governments or qualified nonprofit organizations, it is able to assist those entities that have demonstrated a sustained commitment to community forestry. Through public engagement, these communities are able to articulate specific community needs that this program can meet, and demonstrate that they have the capacity to manage a public asset such as a community forest.

Benefits provided by forests acquired under the CFP will need to be quantified, and may address a variety of outcomes such as protecting a municipal water supply, providing public access for outdoor recreation, or providing economic benefits from sustainable forest management, including harvesting forest products and using woody biomass for renewable energy production. Beyond local measures of success, the contribution of community forests to larger protected areas of forest and open space helps support resource-based economies, and

adds needed resiliency to natural systems as they respond to climate change. Therefore, in addition to public engagement to articulate local needs and capacity, successful community forests in the CFP will be part of a larger landscape level context that will protect many kinds of open spaces and working lands that provide a variety of ecosystem services. In this way, the program delivers local benefits that can also have a larger impact, since these community forests will likely be part of a larger conservation initiative.

Grant recipients will be required to provide the Forest Service with a Geographic Information System (GIS) shapefile of CFP project tracts and cost share tracts. The geospatial information will reside at the National Information Center for State and Private Forestry. The areas protected through this program will be able to be seen in map and other formats on the Forest Service website. These GIS shapefiles will allow the Forest Service to spatially track CFP program accomplishments and allow the agency to calculate program outcomes and public benefits provided by the lands protected through CFP. The Agency welcomes comments on outcome measures for benefits provided by forests acquired under the CFP.

### **Discussion of Specific Issues; Project Review and Selection Process**

Under CFP, applications will be submitted to the State Forester or equivalent Tribal Government official who will, in turn, conduct a general review of all applications for eligibility and compatibility with landscape conservation efforts. The proposed rule does not allow submission of an application for a project to both CFP and the Forest Legacy Program simultaneously. The State Forester or equivalent Tribal Government official may provide technical assistance to applicants in the preparation of applications and implementation of grants.

The Forest Service proposes to conduct a nationally competitive review and ranking process to select projects for funding. The application process is outlined in § 230.3 of this proposed rule. Individual applications will be ranked according to criteria outlined in § 230.5 of this proposed rule. The Forest Service anticipates providing additional specificity on the review process, review criteria, and timelines in an annual request for proposals (RFP). The Forest Service requests public comment regarding the application process outlined in § 230.3 and the ranking criteria outlined in § 230.5 of this proposed rule

The Forest Service wants to minimize the amount of time between issuing the RFP and funding the selected projects. To achieve this goal, the Forest Service anticipates issuing an RFP each year, and selecting projects during the first quarter of the following fiscal year (October-December) subject to the availability of funds. The proposed rule requires the State Forester or equivalent Tribal Government official to forward all applications with recommendations to the Forest Service. While the Forest Service anticipates this intermediate step will add approximately 30 days to the review process, the Agency believes that input from State Foresters and Tribal Governments will be valuable in helping the Forest Service make final funding decisions.

### **Project Compliance With the National Environmental Policy Act**

Project grants are subject to National Environmental Policy Act (NEPA) and must comply with agency NEPA implementing procedures as described in 40 CFR 1500–1508 as well as the Council on Environmental Quality's NEPA procedures at 40 CFR 1500–1508. CFP grants are to be used for transferring title and ownership of private lands to third parties and will not fund any ground-disturbing activities. The Forest Service has concluded that CFP grants fall under the categorical exclusion provided in the Forest Service's NEPA procedures for "acquisition of land or interest in land" 36 CFR 220.6(d)(6); 73 FR 43084 (July 24, 2008). As a result, CFP project grants are excluded from documentation in an environmental assessment or impact statement. The applicability of the categorical exclusion will be confirmed through scoping and a review for extraordinary circumstances.

### **Eligible Entities**

The statute establishing CFP states that only local governments, Tribal Governments, and qualified nonprofit organizations are eligible to receive a grant through CFP. The statute also provided definitions for those three eligible organizations. Local governments are defined as municipal, county, and other local governments with jurisdiction over local land use decisions. Tribal Governments are defined as those that are federally recognized Tribes as prescribed by section 4 of the Indian Self-Determination and Education Assistance Act (U.S.C. 450b). Finally, qualified nonprofit organizations are defined as charities under the Internal Revenue Code (26 U.S.C. 501(c)(3)) and which also have a conservation purpose

(26 U.S.C. 170(h)(4)(A)). A conservation purpose is defined as the preservation of land for outdoor recreation or education, protection of natural habitat or ecosystems, preservation of open space, and preservation of historic lands or structures. Consistent with regulations of the Internal Revenue Service (26 CFR 1.170A-14(c)(1)) qualified non-profit organizations must also have a commitment to protect in perpetuity, the purposes for which the tract was acquired under the CFP and demonstrate that they have the resources to enforce the protection of the property as a community forest. In general, a land conservancy or land trust is the type of organization that would be considered a qualified nonprofit organization under the authorizing statute of the CFP.

### Ensuring Permanence of Community Forest Projects

In order to minimize the chances that the property is ever sold, or converted to non-forest uses, the following four actions will be required of the grant recipient:

(1) Grant recipients will be required to record a Notice of Grant Requirements with the deed in the lands records of the local county or municipality.

(2) Grant recipients will define objectives for the use and management of the community forest in the required Community Forest Plan. Because the size, condition, and possible uses of community forests under this program could be quite varied, the Community Forest Plan will identify forest uses for the property. In order to guide compliance with the requirements of the CFP, "non-forest uses" is defined in § 230.2 of this proposed rule.

(3) Every ten years, grant recipients will submit to the Forest Service a self-certifying statement that the property has not been sold or converted to non-forest uses.

(4) Grant recipients will be subject to a spot check conducted by the Forest Service to verify that property acquired under the CFP has not been sold or converted to non-forest uses (§ 230.2).

In the statute establishing the CFP, Congress required that the grant recipient cannot sell the land or convert it to non-forest uses (Sec. 8003.e). In the event that these conditions are violated, the law requires that the grant recipient pay the Federal Government an amount equal to the greater of the current sale price or current appraised value of the land. An additional penalty is that the grant recipient that sells or converts a parcel acquired under the CFP will not be allowed to receive additional grants under the program. Ramifications for

conversion to non-forest use or sale is discussed in § 230.9 "Ownership Use and Requirements" of this proposed rule.

### Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs

The Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 ("Uniform Act") (42 U.S.C. 4601, *et. seq.*) provides guidance and procedures for the acquisition of real property by the Federal government, including relocation benefits to displaced persons. Department of Transportation regulations implementing the Uniform Act (49 CFR 24) have been adopted by the Department of Agriculture (7 CFR 21). However, CFP is deemed exempt from the Uniform Act because it meets the exemption criteria stated at 49 CFR 24.101(b)(1).

### Federal Appraisal Standards

Section 7A(c)(4) of the Cooperative Forestry Assistance Act (16 U.S.C. 2103d(c)(4)), requires that land acquired under CFP be appraised in accordance with the *Uniform Appraisal Standards for Federal Land Acquisitions* (Federal Appraisal Standards) in order to determine the non-Federal share of the cost of a parcel of privately-owned forest land. The Federal Appraisal Standards are contained in a readily available public document, which is well known to professional appraisers (*see: [http://www.usdoj.gov/enrd/Legal\\_Documents.html](http://www.usdoj.gov/enrd/Legal_Documents.html)*). A grant recipient will be responsible for assuring that the appraisal of the CFP tract is done in conformance with the Federal Appraisal Standards. The Federal Appraisal Standards will be used to determine reimbursement for the non-Federal cost share. However, separate tracts donated for the purpose of providing the non-Federal cost share may be appraised using the Uniform Standards of Professional Appraisal Practice (USPAP) or the IRS regulations for a donation in land. The Forest Service will be available to assist applicants with the appraisal and associated appraisal review, and will conduct spot checks to assure compliance with Federal Appraisal Standards.

### Regulatory Certifications

#### *Regulatory Planning and Review*

This proposed rule has been reviewed under USDA procedures and Executive Order 12866. The Office of Management and Budget (OMB) has determined that this proposed rule is significant for

purposes of Executive Order 12866. A Cost Benefit Analysis has been completed and has determined that the benefits for each established forests will vary, depending on characteristics of the forest land, the community, and the management objectives developed with public input in the establishment of the required community forest plan. Where these forests are located will also be dependent on the communities that support them, therefore, they could occur in communities from the very rural to decidedly urban. Since there will be diversity among forests and their benefits, this analysis uses qualitative as well as quantitative methods to describe the potential benefits and costs of CFP.

The primary cost of CFP is the acquisition of the land itself. The transfer of lands from private property may reduce the tax base, or result in forgone economic benefits fostered by development. This analysis assumes that development and associated activity is established elsewhere without resulting in forestland conservation and the opportunity cost of lower economic activity is off-set by the benefits provided by the community forest, such that the main costs become the cost of the acquisition and the tax revenue foregone by the local government unit. These costs are compared with the benefits of protecting forest land, which are largely intangibles, such as environmental goods and services from the land and non-market valued amenities, such as open spaces and scenic views, but also includes the economic value of retaining and active working forest in the local economy. Qualitative and quantitative evidence supports the assertion that community forests provide many benefits to communities, especially in areas threatened by conversion of private forest land.

This proposed rule will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor adversely affect State or local governments. This proposed rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this proposed rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs.

This proposed rule does not regulate the private use of land or the conduct of business. It is a grant program to local governments, Tribal Government and qualified nonprofit organizations for purposes of acquiring land for resource

conservation and open space preservation. By providing funding to eligible entities for land acquisition, the Federal Government will promote the non-monetary benefits of sustainable forest management. These benefits include: improved water quality, wildlife and fish habitat, forest based educational programs including vocational education programs in forestry, replicable models of effective forest stewardship for private landowners, open space preservation, carbon sequestration, and enhanced recreational opportunities including hunting and fishing.

The acquisition of land by eligible entities may affect the local real property tax base, depending on applicable state law and the tax status of the acquiring entity. The possible impact on the real property tax base is not possible to ascertain, but is assumed that any land going from taxable to non-taxable status would cause a commensurate shifting of the tax burden to other taxable properties or, alternatively, a reduction in local tax revenues.

As a new program, CFP would not materially alter the budgetary impact of entitlements, user fees, loan programs, or the rights and obligations of program participants. The program is voluntary for each participating eligible entity.

#### *Proper Consideration of Small Entities*

This proposed rule has been considered in light of Executive order 13272 regarding property considerations of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996. The proposed rule for voluntary participation in the CFP does not impose significant direct costs on small entities. This proposed rule imposes no additional requirements on the affected public. Entities most likely affected by this proposed rule are the local governments, qualified nonprofit organizations, and Tribal governments eligible to receive a grant through CFP. The minimum requirements on small entities imposed by this proposed rule are necessary to protect the public interest, not administratively burdensome or costly to meet, and are within the capabilities of small entities to perform. The proposed rule would not materially alter the budgetary impact of entitlements, user fees, loan programs, or the rights and obligations of program participants. It does not compel the expenditure of \$100 million or more by any State, local or Indian Tribal government, or anyone in the private sector. Under these circumstances, the Forest Service has determined that this action would not

have a significant economic impact on a substantial number of small entities.

#### *Unfunded Mandates*

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

#### *Federalism*

The Forest Service has considered this rule under the requirements of Executive Order 13132, Federalism, and Executive Order 12875, Government Partnerships. The Forest Service has determined that the rule conforms with the federalism principles set out in these Executive Orders. The rule would not impose any compliance costs on the States other than those imposed by statute, and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Based on comments received on this proposed rule, the Agency will consider if any additional consultations will be needed with the State and local governments prior to adopting a final rule.

#### *Controlling Paperwork Burdens on the Public*

In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the Forest Service is requesting an approval of a new information collection.

*Title:* Proposed substitution of 36 CFR part 230, Subpart A with Community Forest and Open Space Conservation Program.

*OMB Number:* 0596–New.

*Expiration Date of Approval:* 3 years from approval date.

*Type of Request:* New information collection.

*Abstract:* The purpose of CFP is to achieve community benefits through grants to local governments, Tribal Governments, and qualified nonprofit organizations to establish community forests by acquiring and protecting private forestlands. This proposed rule includes information requirements necessary to implement CFP and comply with grants regulations and OMB Circulars. The information

requirements will be used to help the Forest Service in the following areas:

(1) To determine that the applicant is eligible to receive funds under the program,

(2) To determine if the proposal meets the qualifications in the law and regulations,

(3) To evaluate and rank the proposals based on a standard, consistent information, and

(4) To determine if the projects costs are allowable, and sufficient cost share is provided.

Local governmental entities, Tribal Governments, and qualified nonprofit organizations are the only entities eligible for the program, and therefore are the only organizations from which information will be collected.

The information collection required for a request for proposals and grant application, is approved and assigned Office of Management and Budget Control (OMB) No. 0596–New. The information collection required for a proposed bonded notice in this proposed rule has been submitted to OMB as a new collection.

*Estimated Number of Respondents:* 180.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Number of Total Annual Responses:* 180.

*Estimated Total Annual Burden on Respondents:* 5,800 hours.

*Comments:* Comments are invited on:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

#### *Consultations and Coordination With Indian Tribal Governments*

This proposed rule has tribal implications as defined in Executive Order 13175. Section 7A(a)(1) of the Cooperative Forestry Assistance Act establishes that Federally recognized Indian tribes are eligible entities to participate in the CFP. In accordance with the President's memorandum of

April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951); the Executive Order of November 6, 2000, "Consultation and Coordination With Indian Tribal Governments" (EO 13175); and with the directives of the Department of Agriculture (DR1350-001); we have determined that specific effects on Indian tribes are likely to occur through implementation of the CFP and, therefore, the opportunity for government-to-government consultation will be provided. Tribal consultation will be accomplished through local and regional consultation processes in coordination with the Washington Office of the Forest Service.

Tribal consultation was initiated on October 20, 2010, and is currently ongoing. No Tribal input has been received during the initial 60-day period. Consultation will continue during the 60-day public comment period.

#### *No Takings Implementations*

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the proposed rule does not pose the risk of a taking of constitutionally protected private property. This proposed rule implements a program to assist eligible entities to acquire land from willing landowners. Any land use restrictions are voluntarily undertaken by program participants.

#### *Environmental Impact*

The Forest Service has determined that this proposed rule falls under the categorical exclusion provided in Forest Service regulations on National Environmental Policy Act procedures. Such procedures exclude from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish service wide administrative procedures, program processes, or instructions." 36 CFR 220.6(d)(2); 73 FR 43084 (July 24, 2008). This proposed rule outlines the programmatic implementation of CFP, and as such, has no direct effect on Forest Service decisions for land management activities.

#### *Energy Effects*

This proposed rule has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this proposed rule does not constitute a significant energy action as defined in the Executive Order.

#### *Civil Justice Reform*

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

#### **List of Subjects in 36 CFR Part 230**

Grant programs, Grants administration, State and local governments, Tribal governments, Nonprofit organizations, Conservation, Forests and forest products, Land sales.

Therefore, for the reasons set forth in the preamble, the Forest Service proposes to amend part 230 of Title 36 of the Code of Federal Regulations by revising subpart A to read as follows:

#### **PART 230—STATE AND PRIVATE FORESTRY ASSISTANCE**

1. The authority citation for part 230 is revised to read as follows:

**Authority:** 16 U.S.C. 2103(d) & 2109(e).

2. Revise Subpart A to read as follows.

#### **Subpart A—Community Forest and Open Space Conservation Program**

Sec.

- 230.1 Purpose and scope.
- 230.2 Definitions.
- 230.3 Application process.
- 230.4 Application requirements.
- 230.5 Ranking criteria and proposal selection.
- 230.6 Project costs and cost share requirements.
- 230.7 Grant requirements.
- 230.8 Acquisition requirements.
- 230.9 Ownership and use requirements.
- 230.10 Technical assistance funds.

#### **Subpart A—Community Forest and Open Space Conservation Program**

##### **§ 230.1 Purpose and scope.**

(a) The regulations of this subpart govern the rules and procedures for the Community Forest and Open Space Conservation Program (CFP), established under Section 7A of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103d). Under CFP, the Secretary of Agriculture, acting through the Chief of the Forest Service, awards grants to local governments, Tribal Governments, and qualified nonprofit

organizations to establish community forests for community benefits by acquiring and protecting private forestlands.

(b) The CFP applies to eligible entities within any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, 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, and the territories and possessions of the United States.

##### **§ 230.2 Definitions.**

The terms used in this subpart are defined as follows:

*Community benefits.* One or more of the following:

(1) Economic benefits such as timber and non-timber products resulting from sustainable forest management and tourism;

(2) Environmental benefits, including clean water, stormwater management, and wildlife habitat;

(3) Benefits from forest-based educational programs, including vocational education programs in forestry;

(4) Benefits from serving as replicable models of effective forest stewardship for private landowners;

(5) Recreational benefits, such as hiking, hunting and fishing; and

(6) Public access.

*Community forest.* Forest land owned in fee simple by an eligible entity that provides public access and is managed to provide community benefits pursuant to a community forest plan.

*Community forest plan.* A tract-specific plan that guides the management and use of this community forest, developed with community involvement, and includes the following components:

(1) A description of the property, including acreage and county location, land use, forest type and vegetation cover;

(2) Objectives for the community forest;

(3) Community benefits to be achieved from the establishment of the community forest;

(4) Mechanisms promoting community involvement in the development and implementation of the community forest plan;

(5) Implementation strategies for achieving community forest plan objectives;

(6) Plans for the utilization or demolition of existing structures and proposed needs for further improvements; and,

(7) Long-term use and management of the property.

*Eligible entity.* A local governmental entity, Tribal Government, or a qualified nonprofit organization that is qualified to acquire and manage land.

*Eligible lands.* Private forest lands that:

(1) Are threatened by conversion to nonforest uses;

(2) Are not lands held in trust by the United States on behalf of any Tribal Government or allotment lands; and,

(3) If acquired by an eligible entity, can provide defined community benefits under CFP and allow public access.

*Equivalent tribal government official.* An individual designated and authorized by the Tribal Government.

*Federal appraisal standards.* The *Uniform Appraisal Standards for Federal Land Acquisitions* developed by the Interagency Land Acquisition Conference.

*Forest lands.* Lands that are at least five acres in size, suitable to sustain natural vegetation, and at least 75 percent forested.

*Grant recipient:* An eligible entity that receives a grant from the U.S. Forest Service through the CFP.

*Landscape conservation initiative.* A landscape-level conservation or management plan or activity that identifies conservation needs and goals of a locality, state, or region. Conservation goals identified need to correspond with the community and environmental benefits outlined for the CFP.

*Local governmental entity.* Any municipal government, county government, or other local government body with jurisdiction over local land use decisions as defined by Federal or State law.

*Non-forest uses.* Activities that threaten forest cover and are inconsistent with the Community Forest Plan, and include the following:

(1) Subdivision;

(2) Residential development, except for a caretaker building;

(3) Mining and nonrenewable resource extraction, except for activities that would not require surface disturbance of the community forest such as directional drilling for oil and gas development;

(4) Industrial use, including the manufacturing of products;

(5) Commercial use, except for sustainable timber or other renewable resources, and limited compatible commercial activities to support cultural, recreational and educational use of the community forest by the public; and

(6) Structures and facilities, except for compatible recreational facilities, concession and educational kiosks,

energy development for onsite use and parking areas. Said structures, facilities and parking areas must have minimal impacts to forest and water resources.

*Qualified nonprofit organization.* Defined by the CFP authorizing statute (Public Law 110–234; 122 Stat. at 1281), an organization that is described in section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)) and operates in accordance with one or more of the conservation purposes specified in section 170(h)(4)(A) of that Code (26 U.S.C. 170(h)(4)(A)). For the purposes of CFP, a qualified nonprofit organization must meet the following requirements:

(1) Consistent with regulations of the Internal Revenue Service at 26 CFR 1.170A–14(c)(1):

(i) Have a commitment to protect in perpetuity the purposes for which the tract was acquired under the CFP; and

(ii) Demonstrate that it has the resources to enforce the protection of the property as a community forest as a condition of acquiring a tract under the CFP.

(2) Operate primarily or substantially in accordance with one or more of the conservation purposes specified in section 170(h)(4)(A) of I.R.S. code (26 U.S.C. 170(h)(4)(A)). Conservation purposes include:

(i) The preservation of land areas for outdoor recreation by, or the education of, the general public,

(ii) The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,

(iii) The preservation of open space (including farmland and forest land) where such preservation is for the scenic enjoyment of the general public, or pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit, or

(iv) The preservation of a historically important land area or a certified historic structure.

*Public access.* Access that is provided on a non-discriminatory basis at reasonable times and places, but may be limited by actions protecting resources or public health and safety.

*State forester.* The State employee who is responsible for administration and delivery of forestry assistance within a State.

*Tribal government.* Defined by section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

#### § 230.3 Application process.

(a) The Forest Service will issue a national request for proposals (RFP) for grants under the CFP. The RFP will

include the following information outlined in this proposed rule:

(1) The process for submitting an application;

(2) Application requirements (§ 230.4);

(3) Review process and criteria that will be used by the Forest Service, the State Forester, and equivalent Tribal Government official (§ 230.5); and

(4) Other conditions determined appropriate by the Forest Service.

(b) Pursuant to the RFP, interested eligible entities will submit an application for program participation to:

(1) The State Forester, for applications by local governments and qualified nonprofit organizations, or

(2) The equivalent Tribal Government official, for applications submitted by a Tribal Government.

(c) The State Forester or equivalent Tribal Government official will review all applications and assess:

(1) That the applicant is an eligible entity;

(2) That the land is eligible; and

(3) Whether the project contributes to a landscape conservation initiative.

(d) In accordance with the RFP, the State Forester or equivalent Tribal Government official will forward all applications to the Forest Service, and

(1) Provide an assessment of each application, and

(2) Describe what technical assistance they may render in support of applications and an estimate of needed financial assistance (§ 230.10).

(e) A proposed application cannot be submitted for funding consideration simultaneously for both CFP and the Forest Service's Forest Legacy Program (16 U.S.C. 2103c).

#### § 230.4 Application requirements.

The following section outlines minimum application requirements, but the RFP may include additional requirements.

(a) Documentation verifying that the applicant is an eligible entity and that the proposed acquisition is of eligible land that contains forest land.

(b) Applications must include the following regarding the property proposed for acquisition:

(1) A description of the property, including acreage and county location;

(2) A description of current land uses, including improvements;

(3) A description of forest type and vegetative cover;

(4) A map of sufficient scale to show the location of the property in relation to roads and other improvements as well as parks, refuges, or other protected lands in the vicinity;

(5) A description of applicable zoning and other land use regulations affecting the property;

(6) Relationship of the property within and its contributions to a landscape conservation initiative; and

(7) A description of any threats of conversion to nonforest uses.

(c) Information regarding the proposed establishment of a community forest, including:

(1) A description of the benefiting community, including demographics, and the associated benefits provided by the proposed land acquisition;

(2) A description of the community involvement in the planning and long-term management of the community forest;

(3) An identification of persons and organizations that support the project and their specific role in acquiring the land and establishing and managing the community forest; and

(4) A draft Community Forest Plan. The eligible entity is encouraged to work with the State Forester or equivalent Tribal Government official for technical assistance when developing or updating the Community Forest Plan.

(d) Information regarding the proposed land acquisition, including:

(1) A proposed project budget (§ 230.6);

(2) The status of due diligence, including signed option or purchase and sale agreement, title search, minerals determination, and appraisal;

(3) Description and status of cost share (secure, pending, commitment letter, etc.) (§ 230.6);

(4) The status of negotiations with participating landowner(s) including purchase options, contracts, and other terms and conditions of sale;

(5) The proposed timeline for completing the acquisition and establishing the community forest; and

(6) Long term management costs and funding source(s).

(e) Applications must comply with the Uniform Federal Assistance Regulations (7 CFR 3015).

(f) Applications must also include the forms required to process a Federal grant. Section 230.7 references the grant forms that must be included in the application and the specific administrative requirements that apply to the type of Federal grant used for this program.

#### **§ 230.5 Ranking criteria and proposal selection.**

(a) Using the criteria described below, to the extent practicable, the Forest Service will give priority to:

(1) An application that maximizes the delivery of community benefits, as

defined in this proposed rule, through a high degree of public participation; and

(2) An application with a subject property that makes a substantial contribution to a landscape conservation initiative. A landscape conservation initiative, as defined in this proposed rule, is a landscape-level conservation or management plan or activity that identifies conservation needs and goals of a locality, state, or region.

(b) The Forest Service will evaluate applications received by the State Foresters and equivalent Tribal Government officials and award grants based on the following criteria:

(1) Type and extent of community benefits provided. Community benefits are defined in this proposed rule as:

(i) Economic benefits such as timber and non-timber products resulting from sustainable forest management and tourism;

(ii) Environmental benefits, including clean water, stormwater management, and wildlife habitat;

(iii) Benefits from forest-based educational programs, including vocational education programs in forestry;

(iv) Benefits from serving as replicable models of effective forest stewardship for private landowners;

(v) Recreational benefits, such as hiking, hunting and fishing; and

(vi) Public access.

(2) Extent and nature of community engagement in the establishment and long-term management of the community forest;

(3) Amount of cost share leveraged;

(4) Extent to which the community forest contributes to a landscape conservation initiative;

(5) Extent of due diligence completed on the project, including cost share committed and status of appraisal;

(6) Likelihood that, unprotected, the property would be converted to non-forest uses;

(7) Costs to the Federal government; and

(8) Additional considerations as may be outlined in the RFP.

#### **§ 230.6 Project costs and cost share requirements.**

(a) The CFP Federal contribution cannot exceed 50 percent of the total project costs.

(b) Allowable project and cost share costs will include the purchase price and the following transactional costs associated with the acquisition: Appraisals and appraisal reviews, land surveys, legal and closing costs, development of the community forest plan, and title examination. The

following principles and procedures will determine allowable costs for grants:

(1) For local and Tribal governments, refer to OMB Circular A-87 (Cost Principles for State, Local and Indian Tribal Governments).

(2) For nonprofit organizations, refer to OMB Circular A-122 (Cost Principles for Nonprofit Organizations).

(c) Project costs do not include the following:

(1) Long-term operations, maintenance, and management of the land;

(2) Construction of buildings or recreational facilities;

(3) Research;

(4) Existing liens or taxes owed; and

(5) Costs associated with preparation of the application, except for appraisals and the community forest plan.

(d) Cost share contributions can include cash, in-kind services, or donations and must meet the following requirements:

(1) Be supported by grant regulations described above;

(2) Not include other federal funds unless specifically authorized by Federal statute;

(3) Not include non-federal funds used as cost share for other federal programs;

(4) Not include funds used to satisfy mandatory or compensatory mitigation requirements under a Federal regulation, such as Clean Water Act, River and Harbor Act, or Endangered Species Act;

(5) Not include borrowed funds; and

(6) Must be accomplished within the grant period.

(e) Cost share contributions may include the purchase or donation of lands located within the community forest as long as it is provided by an eligible entity and legally dedicated to perpetual land conservation consistent with CFP program objectives.

(f) For the purposes of calculating the cost share contribution, the grant recipient may request the inclusion of project due diligence costs such as title review and appraisals that incurred prior to issuance of the grant. These pre-award costs may occur up to one year prior to the issuance of the grant, but cannot include the purchase of CFP land, including cost share tracts.

#### **§ 230.7 Grant requirements.**

(a) The following grant forms and supporting materials must be included in the application:

(1) An Application for Federal Assistance (Standard Form 424);

(2) Budget information (Standard Form SF 424c—Construction Programs);

(3) Assurances of compliance with all applicable Federal laws, regulations, and policies (Standard Form 424d—Construction Programs); and

(4) Additional forms as may be required.

(b) Once an application is selected, funding will be obligated to the grant recipient through a grant.

(c) The initial grant period will be two years, and acquisition of lands should occur within that timeframe. The grant may be reasonably extended by the Forest Service for an additional 12 months when necessary to accommodate unforeseen circumstances in the land acquisition process.

(d) The grant paperwork must adhere to grant requirements listed below.

(1) Local and Tribal governments should refer to OMB Circular A-102 (Grants and Cooperative Agreements with State and Local Governments) and 7 CFR 3016 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) for directions.

(2) Nonprofit organizations should refer to OMB Circular A-110 (Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations) and 7 CFR 3019 (Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations) for directions.

(e) Forest Service must approve any amendment to a proposal or request to reallocate funding within a grant proposal. If negotiations on a selected project fail, the applicant cannot substitute an alternative site.

(f) The grant recipient must comply with the requirements in § 230.8 before funds will be released.

(g) After the project has closed, as a requirement of the grant, grant recipients will be required to provide the Forest Service with a Geographic Information System (GIS) shapefile of CFP project tracts and cost share tracts.

(h) Any funds not expended within the grant period must be de-obligated and revert to the Forest Service for redistribution through CFP process.

(i) All media, press, signage, and other documents discussing the creation of the community forest must reference the partnership and financial assistance by the Forest Service through CFP.

#### **§ 230.8 Acquisition requirements.**

(a) Grant recipients participating in CFP must complete the following, which applies to all tracts, including cost share tracts:

(1) Complete an appraisal.

(i) For lands purchased with CFP funds, the appraisal must comply with Federal Appraisal Standards prior to the release of the grant funds. The grant recipient must provide documentation that the appraisal and associated appraisal review were conducted in a manner consistent with the Federal appraisal standards.

(ii) For donated cost share tracts, the market value must be determined by an independent appraiser. The value needs to be documented by a responsible official of the party to which the property is donated.

(2) Prior to closing, notify the landowner in writing of the appraised value of the property and that the sale is voluntary. If the grant recipient has a voluntary option for less than appraised value, they do not have to renegotiate the agreement.

(3) Purchase all surface and subsurface mineral rights, whenever possible. However, if severed mineral rights cannot be obtained, then the grant recipient must follow the retention of qualified mineral interest requirements outlined in the Internal Revenue Service regulations (26 CFR 1.170A-14 (g)(4)), which address both surface and subsurface minerals.

(4) Ensure that title to lands acquired conforms with title standards applicable to state land acquisitions where the land is located.

(i) Title to lands acquired using CFP funds must not be subject to outstanding or reserved property rights or future interests the reasonable exercise of which would be contrary to the purposes for which the land was acquired.

(ii) Whenever possible, title insurance must be secured for the full value of the land, with the United States named as an additional insured on the policy.

(iii) Title insurance must not be a substitute for acceptable title.

(5) Record with the deed in the lands record of the local county or municipality, a Notice of Grant Requirement, which includes the following:

(i) States that the property (including cost share tracts) was purchased with CFP funds;

(ii) Provides a legal description;

(iii) Identifies the name and address of the grant recipient who is the authorized title holder;

(iv) States the purpose of the CFP;

(v) References the Grant Agreement with the Forest Service (title and agreement number) and the address where it is kept on file;

(vi) States that the grant recipient confirms its obligation to manage the

interest in real property pursuant to the grant, the Community Forest Plan, and the purpose of the CFP;

(vii) States that the grant recipient will not convey or encumber the interest in real property, in whole or in part, to another party; and

(viii) States that the grant recipient will manage the interest in real property consistent with the purpose of the CFP.

#### **§ 230.09 Ownership and use requirements.**

(a) Complete the final Community Forest Plan within 120 days of the land acquisition, and must be updated periodically, but at least every ten years.

(b) Provide appropriate public access.

(c) In the event that a grant recipient sells or converts to nonforest use, a parcel of land acquired under CFP, the grant recipient must:

(1) Pay the United States an amount equal to the current sale price or the current appraised value of the parcel, whichever is greater; and

(2) Not be eligible for additional grants under CFP.

(d) For Tribal Governments, land acquired using a grant provided under CFP must not be sold, converted to non-forest uses, or converted to land held in trust by the United States on behalf of any Tribal Government.

(e) Every ten years, the grant recipients will submit to the Forest Service an updated Community Forest Plan and a self-certifying statement that the property has not been sold or converted to non-forest uses.

(f) Grant recipients will be subject to a spot check conducted by the Forest Service to verify that property acquired under the CFP has not been sold or converted to non-forest uses.

#### **§ 230.10 Technical assistance funds.**

CFP technical assistance funds will be provided to State Foresters and equivalent Tribal Government officials through an administrative grant to help implement community forest projects funded through CFP, and as a result, funds will only be provided to States or Tribal Government with a CFP project funded within their jurisdiction. Section 7A (f) of the authorizing statute limits the funds made available for program administration and technical assistance to not more than 10% of all funds made available to carry out the program for each fiscal year.

Dated: December 30, 2010.

**Jay Jensen,**

*Deputy Under Secretary, NRE.*

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