

**USDA FOREST SERVICE
GUIDANCE FOR
CONDUCTING COMPLIANCE REVIEWS OF RECIPIENTS
OF STATE AND PRIVATE FORESTRY FUNDING**

December 1999

I. INTRODUCTION

This describes the process for conducting compliance reviews of organizations (recipients) that receive Federal financial assistance from the USDA Forest Service (State and Private Forestry).

1. Purpose

Compliance reviews are systematic, planned investigations conducted by the USDA Forest Service Regions, Area, and International Institute of Tropical Forestry (IITF) in conjunction with the USDA Forest Service Civil Rights (CR) and State and Private Forestry (S&PF). These reviews assess and evaluate the civil rights and equal opportunity policies, procedures and practices of recipients and sub-recipients to determine their compliance with the applicable civil rights statutes, regulations, standards and policies. Civil Rights and S&PF together, conduct compliance reviews of recipients.

2. Responsibilities: CR, S&PF, Regions, Area, and IITF

A. CR

- (1) CR provides overall leadership and direction in the conduct of compliance reviews.
- (2) CR provides technical assistance, training, and support to S&PF.
- (3) CR is responsible for establishing and maintaining internal procedures for avoiding and resolving program complaints, identifying issues giving rise to complaints and addressing trends and patterns of practice to eliminate recurrences.

B. CR and S&PF

CR and S&PF working together are responsible for conducting compliance reviews and ensuring that the programs and activities of recipients are in compliance with the civil rights laws, regulations, and policies.

C. Regions, Area, and IITF

Prior to the beginning of each fiscal year, the Regions, Area, and IITF are to prepare and submit to CR annually, with a copy to the Deputy Chief, S&PF, a compliance review plan and schedule

for on-site review of recipients of S&PF funding including dates, geographical locations and program areas to be covered.

The Regions, Area, and IITF are also responsible for:

- (1) Providing each of their unit's recipients of S&PF funding, with training, technical assistance and support in the recipient's civil rights responsibilities under Title VI and other nondiscrimination laws, regulations and policies.
- (2) Selection of recipients for review in accordance with criteria listed in this document.
- (3) Conduct of the Compliance Reviews in accordance with these guidelines.
- (4) Monitoring and oversight of the implementation of the Corrective Action Plans negotiated with recipients who have been found to be in noncompliance.
- (5) Providing annual reports summarizing compliance reviews completed, monitoring activities, and corrective actions.

3. Compliance Reviews

A. Target and Scope of Reviews

Targeting Criteria: Compliance reviews cannot be randomly targeted. The decision to conduct a compliance review of a recipient should be based on neutral criteria or evidence of a violation. Criteria to be considered in targeting compliance reviews include:

- (1) Issues targeted in the USDA Forest Service strategic plan;
- (2) Issues frequently identified as problems faced by program beneficiaries;
- (3) Geographic areas where problems have been identified or geographic areas in which there has been little compliance activities;
- (4) Issues raised in complaints that could not be fully covered within the scope of the complaint investigation;
- (5) The identification of problems and issues by community groups, advocates and others representing beneficiaries and protected case;
- (6) Issues flagged to the recipient by its block grant recipients; and
- (7) Issues and problems identified by other Federal, State or local civil rights agencies.

B. Scope of Review

It is within the discretion of the CR Director and/or the Deputy Chief of S&PF, in consultation with the affected Regional Forester, Area Director or IITF Director, to determine the scope of any compliance review.

C. Reasonableness of Search

Fourth Amendment considerations of "reasonableness" takes into consideration three factors:

- (1) Whether the proposed search is authorized by statute;
- (2) Whether the proposed search is properly limited in scope; and
- (3) The criteria used, by the Region, Area, IITF, CR and/or S&PF, to target the compliance review.

4. Specific Information and Data for Compliance Reviews

A. Assurance Agreement

All recipients must sign an assurance agreement to comply with Title VI of the Civil Rights Act of 1964 and the other nondiscrimination laws, regulations and policies as a condition of the recipient of Federal funds.

The recipient must also obtain a signed assurance agreement from any of their sub-recipients of funding from S&PF.

Copies of the signed Assurance Agreements are to be required in the pre-review documents.

B. Civil Rights Training

The Region, Area or IITF is to provide their unit's recipients of S&PF funding, with training, technical assistance and support in the recipient's civil rights responsibilities under Title VI and other nondiscrimination laws, regulations and policies. The recipient is responsible for ensuring that the recipient's employees are apprised of their subsequent civil rights responsibilities. Information regarding civil rights training provided to the recipient by the Region, Area or IITF

and training provided by the recipient to the recipient's employees is to be gathered by the review for analysis.

C. Public Notification

All recipients must have an effective public notification system that can inform participants and applicants of their program rights and responsibilities, the policy of nondiscrimination, and procedures for filing a complaint. The review is to evaluate the presence and effectiveness of the following:

- (1) The USDA nondiscrimination statement appears on printed materials (brochures, etc.) which are produced for public notification, information or distribution in accordance with DEPARTMENTAL REGULATION 4300-3. Copies of the recipient's printed materials concerning S&PF funded programs will be collected by the reviewers.
- (2) There is to be a statement of affiliation with the USDA Forest Service on all of the recipient's printed materials concerning S&PF funded programs.
- (3) Printed materials are available in alternative formats, such as large print, etc. Copies of the recipient's printed materials in alternative formats, concerning S&PF funded programs, will be collected by the reviewers for analysis and exhibit.
- (4) Photographs and other graphic representations of individuals reflecting diverse populations. Copies of the recipient's printed materials with photographs and other graphic representations of individuals, concerning S&PF funded programs, will be collected by the reviewers as examples.
- (5) The USDA "and Justice for All" poster is prominently displayed in all public reception areas in accordance with Departmental Regulation 4300-3.

D. Outreach

Recipients are to ensure through deliberate actions that all persons and audiences, especially those who may not have participated fully, know about the availability of and are encouraged to participate in the programs provided through funding from S&PF. The review of outreach is to, at the minimum include:

- (1). The recipient's Public Notification and/or Outreach Plan (PN/OP). A copy is needed for the review.

- (2) Documentation of fulfillment of the PN/OP including methods used to disseminate information to potential program applicants/beneficiaries about the availability of the programs/opportunities.
- (3) Obtain copies of materials.

E. Data Collection

Departmental Regulation 4330-1, Appendix A, Section 2 (2) requires USDA agencies to ensure that recipients collect and maintain racial, ethnic, and sex participation data and eligibility data for their programs receiving Federal funding. This data is used to aid in monitoring quantitatively how effectively programs are reaching covered groups and to provide input for management analyses.

28 CFR 42.406 requires recipients of Federal funding to also provide current racial, ethnic, and sex data of the program's service area.

The following documentation is required, at a minimum:

- (1) Methodology used to gather program participation data. Review of program participation data. Total number of beneficiary contact staff by race, ethnicity and type of position held.
- (2) Racial/ethnic composition of recipient service area utilizing standard OMB racial and ethnic designations
- (3) Composition of advisory boards, commissions, etc., including racial, ethnic, sex data.
- (4) If recipients service area includes one or more national origin minority groups with at least 100 persons with Limited English Proficiency (LEP). The following additional information is required:
 - a. Primary language of each LEP group;
 - b. Estimated number of persons in each LEP group;
 - c. Whether applicant has developed a method or procedure to communicate with LEP persons. If yes, then a description or copy of communications plan;
 - e. Presence and use of beneficiary contact staff who are bilingual in the identified LEP languages - and number and position of such staff by each LEP language identified.

F. Accessibility of Programs and Facilities

Under Section 504, persons with disabilities are to have equal access to participate in the programs that receive funding from S&PF. Accessibility must also be provided to the related facilities. Under the ADA, persons with disabilities are to have equal access to participate in the programs that receive funding from State or local government service, public accommodations, public transportation and commercial establishments. Accessibility must also be provided to the related facilities. The review is to evaluate at a minimum the following:

- (1). Has the recipient conducted a self-evaluation and developed transition plans as needed for programs and also for facilities. If yes, obtain copies of:
 - a. The transition plans for both programs and facilities.
 - b. List of persons with disabilities or other interested person(s) consulted.
 - c. Are program transition plans being implemented in accordance with the timelines stated?
 - d. Are facility transition plans being implemented in accordance with the timelines stated?
- (2) What alternative programs are available to ensure inclusion of persons with disabilities in programs which are not at present accessible.
- (3) How is information disseminated regarding existence and location of services and facilities that are accessible to persons with disabilities, including but not limited to auxiliary aids, sign language interpreters, etc.

G. Program Discrimination Complaints

All of the recipient's employees who have the potential to be in contact with applicants for or beneficiaries of programs that receive funding from S&PF, are to be aware of the process by which the public may file a program discrimination complaint. Such employees are also to be aware of their role in the resolution of program complaints.

At a minimum the review is to obtain information regarding training and program discrimination complaints which have been provided to the recipient by the Region, Area, or IITF. Also, the subsequent training the recipient has provided to employees.

5. Time Frames for Compliance Review Process

Unless otherwise stated, all days are calendar days.

- A. Recipients will receive notice from the Region, Area, or IITF of plans to conduct a compliance review at least 60 days prior to the date on which the review will commence.

This notice will include a description of the scope of the review, data and information required from the recipient, and the date on which the information must be submitted.

- B. Recipients will acknowledge the notice within 10 working days and consult with Region, Area, or IITF contact on submission of the requested data and information.
- C. The compliance review will be completed within 180 days following the receipt of the requested data and information from the recipient subject to review.
- D. Within 30 days of the completion of the compliance review, Region, Area, or IITF will provide the final compliance review report to the recipient. It is USDA Forest Service policy to encourage recipients to engage in voluntary compliance to the greatest extent possible at any stage of the compliance review process. Enforcement proceedings will be initiated only after attempts to secure voluntary compliance have failed.
- E. The recipient must respond within 30 working days following receipt of the initial compliance review report with either a proposal of specific actions it will undertake to remedy any findings of noncompliance. The proposal will be in the form of a voluntary compliance agreement.
- F. When the recipient disagrees with the findings of the review, the recipient must provide a written analysis within 30 days in support of its position. The recipients rebuttal must include:
 - (1) The specific issue for which the recipient does not agree with the finding.
 - (2) A concise statement of the basis for the disagreement that includes (a) a procedural defect in the reviews collection and facts of evidence or (b) a showing that the analysis of the facts and evidence was defective, including the application of the legal standards which were relied on to reach the conclusion.
- G. The Region, Area, or IITF will respond to the recipient's rebuttal within 15 days.
- H. Within 60 days following the release of the initial compliance review report, the Region, Area, or IITF will issue the final compliance review report along with any voluntary compliance agreement and proposed corrective action plan. The final CR compliance review report will be issued to the:
 - The Recipient
 - Forest Service Civil Rights Director
 - Deputy Chief State and Private Forestry
 - National Association of State Foresters

II. PRE-ON-SITE PREPARATIONS

1. Assign Team Leader to the Compliance Review.

The Team Leader is appointed by the Regional Forester, or the Area Director, or the Director of IITF.

Team Leader Responsibilities

- (1) Notify the recipient organization head to discuss the upcoming compliance review and to request a liaison
- (2) Coordinate plans for the compliance review with liaison
- (3) Identify Team Members
- (4) Conduct Team planning and strategy meetings
- (5) Ensure that notification package is sent to the recipient at least 60 days prior to on-site review
- (6) Prepare data request and ensure that data is received and disseminated to Team at least 60 days prior to on-site review.
- (7) Ensure data is analyzed.
- (8) Coordinate arrangements for on-site transportation, work space, equipment, and support.
- (9) Conduct opening meeting with recipient organization.
- (10) Ensure assigned interviews are conducted and evaluated.

- (11) Provide guidance and support for team members in accomplishing assignments.
- (12) Collect team member reports and prepare written preliminary evaluation report.
- (13) Discuss preliminary report with recipient organization at the close of review.
- (14) Prepare draft report.
- (15) Conduct team de-briefing.
- (16) Develop final written report for review and approval by the Regional Forester, or the Area Director, or the Director of IITF.
- (17) Prepare final report and letters of findings for Regional Forester, or the Area Director, or the Director of IITF to submit to recipient organization.

2. Establish Compliance Review Case File

The Team Leader should ensure that the Compliance Review Case File includes:

- A. File Label
 - (1) Recipient name and State
 - (2) Date of on-site review
 - (3) Number of folders (e.g., I of 3)
 - (4) Destruction date
- B. Compliance Review Status Monitoring Sheet (outside of file)
- C. Section 1: Pre-on-site Preparation
 - (1) Pre-on-site notification package
 - (2) List of Team Members, Team Leader
 - (3) Compliance Review Approval Forms
- D. Section II: Review and Evaluation Activities
 - (1) Data collected during pre-on-site period
 - (2) Data collected during on-site
 - (3) Preliminary Evaluation Report
 - (4) Comments and correction action received from organization
- E. Section III: Post On-site Activities

- (1) Final Report
- (2) Recipient Response
- (3) Record of Actions and Outcomes of Voluntary Compliance
- (4) Letter of Findings

F. Section IV: Corrective Action Plan and Monitoring Reports

3. Team Member Selection and Tasks

Team members are selected by the Regional Forester, the Area Director, or the Director of IITF in consultation with the Team Leader, and the Civil Rights Director of that Unit. At a minimum, team members will include representatives from: Civil Rights and S&PF from the unit conducting the review, the recipient organization, State Forestry organizations, Washington Office or designee, and the unit Leadership Team. Additional members can be determined based on the needs of the reviewing unit.

The team should include a member who has served on a previous S&PF Civil Rights Compliance Review. An invitation to provide a member to the review team should be extended to the recipient organization which will next be reviewed by that Region, Area or IITF unit.

Team member tasks include:

- (1) Participation in strategy meetings
- (2) Analysis of pre-on-site data prior to on-site review
- (3) Assist Team Leader with coordination of site arrangement
- (4) Participate in opening meeting on-site
- (5) Coordinate scheduling of interviews with liaison
- (6) Conduct assigned interviews and evaluations
- (7) Alert Team Leader about any potential problems or issues
- (8) Develop preliminary report and draft report of assigned areas
- (9) Participate in closing meeting
- (10) Participate in post-on-site debriefing
- (11) Prepare final report of assigned areas and submit to Team Leader

4. Team Strategy Meeting

The Team Leader will convene strategy meetings prior to the on-site review. These meetings will be used to make decisions and assignments, such as:

- A. Determine team members' areas of responsibility
- B. Determine which team members will analyze what portions of the requested data prior to the on-site

- C. Discuss logistical issues
- D. Finalize any substantive questions or issues, including
 - (1) Overview of recipient programs, activities and beneficiaries
 - (2) Clarifications on applicable civil rights laws, regulations and policies
 - (3) Criteria and standards to be used
 - (4) Previous Compliance Review or complaint investigation findings
 - (5) Formal and informal policies of the organization
 - (6). Sources of information (within and outside of organization)

5. Pre-on-site Notification Package

The Team Leader is responsible for assembling and mailing the Pre-on-site Notification Package to the recipient at least 60 days prior to the date of the on-site investigation. The Package should, at minimum, include the following:

- A. Confirmation of recipient's liaison
- B. Sites to be visited
- C. Individuals to be interviewed
- D. Checklist of information to be returned to the Team Leader within 30 days prior to the on-site review
- E. Description of scope of the review
- F. Questionnaire with instructions for distribution to recipient employees with instructions that it be returned within 30 days prior to the on-site review.

6. Compliance Review Plan

Based on input from the team members and information gathered from the recipient, the Team Leader will prepare a Compliance Review Plan that will guide the work of the Team. This Plan should contain the following parts:

- A. Name of recipient and/or program(s) to be reviewed
- B. Purpose of review

- C. Sites to be reviewed
- D. Scheduled dates and times
- E. Scope of review (including issues to be covered and the extent of coverage)
Statutory Standards/Criteria
- F. Recipient Background Information including:
 - (1) Findings of Previous Compliance Reviews
 - (2) Status of any existing court orders or pending agency action toward the recipient
 - (3) Recipient's programs receiving Federal funding
 - (4) Information on the community (demographics)
- G. List of interviewees, including a random sampling of beneficiaries, and expected area of information.
- H. Interview questions
- I. Participation data to be reviewed
- J. Review of Board, Council, Committee memberships
- K. Date of Letters of Notification
- L. Schedule for completion of review and final report

7. Approval of Review Plan

The Team Leader should communicate the final Review Plan with the Regional Forester, or the Area Director, or the Director of the IITF who must approve the final plan.

III. ON-SITE ACTIVITIES

1. Brief Recipient Officials and Schedule Interviews

A. Entrance Conference

Upon arrival, the Team Leader and Team Members will meet with the recipient organization leadership and/or management team and the liaison for introductions and to set the tone for the on-site process. The Team Leader should review the goals and objectives of the review, explain how it will be conducted, and answer any questions about the review process. This is an opportunity to also confirm any last minute scheduling or logistical changes. The goal of the Entrance Conference is to set the officials at ease and to promote an atmosphere of cooperation and teamwork and to ensure there is a clear understanding of the objectives of the review. It may be helpful to talk about the review in terms of a service that will assist the organization in strengthening its civil rights programs. If not done prior to arrival on-site, the Exit Conference should be scheduled at this time.

2 Interviews

A. Employee interviews

With the help of the liaison, on-site interviews of randomly selected employees will be conducted. It is important that the team interview a cross-section of the employee workforce. Team members are responsible for clarifying the purpose of the review with employees.

B. Management interviews

On-site interviews of randomly selected management staff should be conducted. The focus of these interviews will be on the officials' involvement, participation and support of civil rights programs. Any management concerns, issues or barriers should be surfaced during these interviews.

C. Other interviews

Other interviewees may come from a wide spectrum of individuals who have information about the organization, its programs and services. These interviewees include, but are not limited to program beneficiaries, community leaders, local advocates, etc.

D. Record Examinations

Examine records relevant to delivery of services and benefits. Compare the records with information obtained from interviews and outside sources to confirm facts about the organization's program. Some typical records that should be reviewed include, but are not limited to, the following:

- (1) Federal assurances forms
- (2) Civil Rights Policy statement
- (3) Procedures for informing beneficiaries of their rights
- (4) Program eligibility and enrollee applications
- (5) Related Public Notification, Outreach and/or Communication Plans
- (6) Examples of news clips, brochures, publications, etc.
- (7) Mailing and membership lists
- (8) Demographic data (racial, ethnic and sex) of area served by program
- (9) Data collected by recipient re the racial, ethnic and sex of program participants
- (10) Procedures for processing complaints
- (11) Civil rights training provided to recipient by unit, and by recipient to employees including dates, trainer, curriculum and/or materials
- (12) Annual Reports
- (13) Copies of civil rights laws and regulations

E. Preliminary Evaluation Report

The compliance review team should develop a preliminary report to identify information gaps, conflicting data and information and areas for further investigation. If the recipient submits evidence that an area of noncompliance, identified during the review, was corrected prior to review completion, the review reports (Preliminary, Draft, Final / Letter of Findings) are to acknowledge this voluntary correction by the recipient.

F. Draft Report

Based on the preliminary report, the compliance review team will prepare a draft report prior to the close-out conference. This report can provide the recipient with "early warning" of areas of concern. This enables the recipient to begin efforts immediately to remedy any areas of noncompliance prior to the issuance of a final Letter of Findings.

3. Close Out Conference

A close out conference should be held with recipient's management team. If it is not possible for the entire team to be present, the Team Leader should conduct this conference. The exit conference should be a closed meeting. During the exit conference, the Team Leader will share the draft report and any concerns as well as identify areas that are in compliance. The Team Leader will answer any questions about the compliance review and the post-on-site process.

If there appear to be areas of noncompliance, the Team Leader should discuss with the recipient possible strategies for achieving compliance.

IV. POST-ON-SITE ACTIVITIES

1. Develop Final Report

A. Contents

A final report of the findings of the compliance review should be completed immediately upon return to the office. The report should be signed by the person(s) who conducted the compliance review. This report should include, at the minimum, the following topic areas:

- (1) Background information
- (2) Statement of issues, if any are pertinent
- (3) Legal standards applicable to each issue
- (4) Summary of documentation, analysis and conclusion
- (5) Areas of noncompliance corrected prior to completion of review
- (6) Recommendations/Commendations
- (7) Additional comments or observations

B. Review and Signature on Final Report

Upon completion, the final report /letter of findings should be submitted to the Regional Forester, or the Area Director, or the Director of IITF. The Regional Forester, or the Area Director, or the Director of IITF will review the report and sign with his/her approval.

2. Final Agency Decision: Letter of Findings to recipient

The final report/letter of findings is submitted for issuance to the USDA recipient. The letter of findings should include information about the recipient's rights and timeliness for response.

Copies of the Letter of Findings will be sent to the following:

- The Recipient
- Forest Service Civil Rights Director
- Deputy Chief State and Private Forestry
- National Association of State Foresters

3. Recipient Response to Findings of Noncompliance

A. Within 30 days following the receipt of a Letter of Findings of Noncompliance,

- (1) The recipient must respond with a proposal of specific actions it will undertake to remedy any area(s) found to be in noncompliance. The proposal will be in the form of a voluntary compliance agreement and/or Corrective Action Plan.
- (2) When the recipient disagrees with the findings of the review the recipient must provide a written analysis within 30 days in support of its position. The recipient's rebuttal must include:
 - a. The specific issues for which the recipient does not agree with the finding.
 - b. A concise statement of the basis for the disagreement that includes:
 1. A procedural defect in the reviews collection and facts of evidence or
 2. A showing that the analysis of the facts and evidence was defective, including the application of the legal standards which were relied on to reach the conclusion.
- (3) The Region, Area, or IITF will respond to the recipient's rebuttal within 15 days.

4. Corrective Action Plan

When there is a finding of noncompliance, attempts should be made to achieve voluntary

compliance by the recipient through a Corrective Action Plan.

A. Develop Corrective Action Plan (CAP)

A CAP will be developed to remedy areas of noncompliance. The CAP may include actions and goals suggested by the recipient in addition to those suggested by Team Leader or his/her contacts.

B. Approval of CAP

The Compliance Action Plan establishes specific actions, benchmarks and timetables that the recipient will implement to move from noncompliance to compliance status. The Plan also identifies any periodic reports, reviews and other activities. The Compliance Action Plan must be approved by the Region, Area or IITF CR Director in consultation with CR and S&PF as needed.

The approved CAP will be sent to:

- The Recipient
- Forest Service Civil Rights Director
- Deputy Chief State and Private Forestry
- National Association of State Foresters

C. Oversight, monitoring and follow-up reviews

The Regional Forester, Area Director or Director of IITF is responsible for overseeing and monitoring the implementation of the CAP, and may assign a Monitor of the CAP from the CR staff of their Region, Area or IITF. There should be a quarterly monitoring report prepared for submission to the USFS CR Director, the Deputy Chief for S&PF and the recipient.

When the recipient has accomplished the specific benchmarks or goals, the Regional Forester, Area Director or Director of IITF will issue a Letter of Compliance stating that the recipient has satisfied the terms and conditions of the Compliance Action Plan and the recipient is now classified as being in compliance. A copy will be sent to the USFS Civil Rights Director and the Deputy Chief for S&PF.

5. Within 60 days following the release of the initial compliance review report, the Region, Area, or IITF will issue the final compliance review report along with any voluntary compliance agreement and Corrective Action Plan. The final compliance review report will be issued to the:

- The Recipient
- Forest Service Civil Rights Director
- Deputy Chief State and Private Forestry
- National Association of State Foresters

6. Completion of Corrective Action Plan

When the recipient completes its program of corrective actions, the assigned Agency Monitor of that Plan will prepare a notice for approval by the Regional Forester, Area Director or Director of IITF stating that the recipient is in compliance. The notice of compliance will be sent to:

- The Recipient
- Forest Service Civil Rights Director
- Deputy Chief State and Private Forestry
- National Association of State Foresters

7. Request Enforcement

If attempts to achieve voluntary compliance fail, the Regional Forester, Area Director or Director of IITF CR Director in consultation with the USFS Civil Rights Director and the Deputy Chief for S&PF will issue a Letter of Determination of Noncompliance which makes a finding that voluntary compliance is not possible, describes the actions taken in the attempt to achieve voluntary compliance, and provides notice of the steps that will be taken to begin enforcement proceedings. This letter will be sent to the recipient by certified mail / signature required.