

**USDA Forest Service
Washington Office
Cooperative Forestry Program**

**CIVIL RIGHTS
IMPACT ANALYSIS**



**FOR THE INTERIM FINAL RULE:
Forest Lands Enhancement Program**

**CIVIL RIGHTS IMPACT ANALYSIS
FOR THE PROPOSED FINAL RULE:
Forest Lands Enhancement Program**

Agency: U.S. Department of Agriculture
Forest Service
State and Private Forestry
Cooperative Forestry

Subject: Civil Rights Impact Analysis
Forest Lands Enhancement Program Interim Final Rule

Executive Summary

The interim final rule for the Forest Lands Enhancement Program (FLEP) has been reviewed and analyzed to ensure compliance with Departmental Regulation (DR) 4300-4, "Civil Rights Impact Analysis"; 7 CFR 15d, "Nondiscrimination in Programs and Activities Conducted by the United States Department of Agriculture"; and Departmental Regulation (DR) 1512-1, "Regulatory Decision-Making Requirements" and identify actual or potential adverse effects for minorities, women, and persons with disabilities.

This CRIA includes descriptions of (1) the purpose of performing a CRIA; (2) the civil rights policy of the U.S. Department of Agriculture (USDA); (3) the rule and its implementation plan; (4) eligibility criteria; (5) program delivery; (6) outreach strategy, and (7) barrier removal provisions.

The completed impact analysis revealed no issues or implications arising from established policies or procedures that would discourage or adversely impact the participation of Indian tribes, minorities, women, or persons with disabilities, socially or economically disadvantaged and/or limited resource landowners. On the contrary, the implementation of the FLEP is likely to increase participation of representatives of the groups described in other State and Private Forestry programs, providing not only for additional private value but public environmental, economic and social benefits as well.

Purpose of a Civil Rights Impact Analysis

The CRIA describes the civil rights implications of policy actions before the actions are approved and implemented. The CRIA provides information about the most likely beneficiaries of a decision, program, or activity; how and to what degree the benefits will be demonstrated; and whether the originally planned policy, action, decision, program, or activity should be modified or otherwise changed if possible to ensure increased benefits

or more effective outcomes. The CRIA helps to advise USDA policy makers, managers, and administrators about whether the action or decision will have the effect of unintentionally or otherwise illegally discriminating against USDA customers based on race, color, sex, national origin, religion, age, disability, marital or familial status. Also, the CRIA serves to advise USDA policy makers, managers, and administrators of the effectiveness of decisions as related to ensuring efficient, appropriate allocation or distribution of goods and services in a manner that ensures compliance with all the laws, rules and regulations under which USDA must operate.

USDA Civil Rights Policy

The Civil Rights Policy for the Department of Agriculture, Departmental Regulation 4300-4 dated March 16, 1998, states that the following are among the civil rights strategic goals; (1) Managers, supervisors, and other employees are held accountable for ensuring that USDA customers are treated fairly and equitably, with dignity and respect; and (2) Equal access is assured and equal treatment is provided in the delivery of USDA programs and services for all customers. This is a “one size fits all” policy for all customers regardless of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, marital status or family status.

Disparate impact, a theory of discrimination, has been applied to FLEP in order to reveal any such negative effects that may unfairly and inequitably impact beneficiaries regarding program development, administration and delivery. The objective of this review and analysis is to 1) ensure that all Civil Rights statutes, Federal regulations, and USDA policies and procedures have been complied with; and 2) prevent disparate treatment and minimize adverse Civil Rights impacts that may have caused an effect of discrimination against protected groups members. This review and analysis examined (a) the rule and its implementation plan, (b) eligibility criteria, (c) program delivery, (d) outreach strategy, and (e) barrier removal provisions. The examination sought to determine whether:

- all protected group members are provided the same opportunities to participate in the rule-making process for FLEP;
- all protected group members are provided the same or improved opportunities to access information about or participate in the new FLEP as were present with the Forestry Incentives, Stewardship Incentive or similar programs.

Basics of the Forest Lands Enhancement Program

The Cooperative Forestry Assistance Act of 1978 (Public Law 95-313), as amended in 2002 by the Farm Security and Rural Investment Act, has authorized the establishment of a new Forest Lands Enhancement Program (FLEP) within the USDA that provides financial assistance to the States through the State Foresters to encourage the long-term sustainability of the non-industrial private forest (NIPF) lands. The Commodity Credit Corporation will provide \$100 million to the USDA Forest Service over the life of the

current program to be available to State Forestry agencies to support FLEP activities. Through FLEP, State forestry agencies can provide a wide array of educational, technical and financial services that are intended to ensure that the nation's NIPF and related resources continue to provide sustainable forest products and safeguard the health of our water, air, and wildlife.

Non-industrial private forest land means rural lands with existing tree cover or which is suitable for growing trees owned by private individual, group, association, corporation, Indian tribe or other native group, or other private legal entity, excluding corporations whose stocks are publicly traded or legal entities principally engaged in the production of wood products.

FLEP is a voluntary program in each State and participation by landowners is voluntary. In each State participating in the program, the State Forester and State Forest Stewardship Coordinating Committee will jointly develop a State priority plan that is intended to promote forest management objectives and describe FLEP in their State. The State Forest Stewardship Coordinating Committee includes representatives of 1890 institutions, historically, black, Hispanic and tribal colleges and universities and community-based organizations. The State priority plan will determine the mix of educational, technical and financial assistance with States choosing one or more of these components. As applicable, it will identify educational activities and their outcome, describe the technical assistance to be provided and its outcomes, and describe the cost-share components that will be available to NIPF landowners and the public values of these practices.

Program Eligibility

Program implementation will commence after the publication of an interim final rule and request for comments in the Federal Register, anticipated for December 2003. FLEP is a "one size fits all" program for all customers regardless of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, marital status, family status, socially or economically disadvantaged and/or limited resource landowners within the fifty States, Puerto Rico, Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands and the territories and possessions of the United States, meeting established landowner and land eligibility standards.

Landowners wishing FLEP cost share assistance must have a forest stewardship or management plan that meets the established State standards. A forest stewardship plan contains multiple forest resource conservation recommendations consistent with landowner objectives on contiguous forest acreage. A forest management plan contains single or multiple resource conservation practices promoting forest sustainability consistent with landowner objectives on, at a minimum, that portion of the landownership on which any practice or activity funded under the program will be carried out. FLEP assistance, with the development and implementation of the forest stewardship or management plan and installation of a variety of approved multiple forest resource

conservation practices, will be available through the State Forester and cooperating agencies and organizations of the State Forest Stewardship Coordinating Committee.

Program Administration and Delivery

State Foresters shall develop jointly with the State Forest Stewardship Coordinating Committee a State FLEP priority plan describing program delivery and priorities, policies and procedures including those regarding cost share application, approval and reimbursement consistent with legislation and regulation to be used within the State. The State Forest Stewardship Coordinating Committee includes representatives of 1890 institutions, historically, black, Hispanic and tribal colleges and universities and community-based organizations. In each State, the State Forester or their representative evaluates the management plans submitted by the NIPF owners and approves them for participation in FLEP. Activities engaged in by participating landowners must be consistent with FLEP management plans. FLEP allows treatment of up to 1,000 acres per year and variances of up to 5,000 acres if significant public benefits will accrue. Variances are approved by the State Forester and concurred by the appropriate USDA Forest Service Regional Foresters or Area/Institute Director. The maximum FLEP cost-share payment for any practice maybe up to 75 percent. The aggregate payment to any one landowner through 2007 may not exceed \$100,000. Approved practices for which FLEP cost share has been received shall be maintained for a minimum of 10 years. State Foresters can establish lesser percentages and reimbursement levels.

Roles and Responsibilities

The State Forester will:

- identify application and associated ranking procedures
- determine applicant, land and practice eligibility
- decide whether requested practices are needed and consistent with program priorities
- approve eligible applications and advise applicants of FLEP contract requirements
- advise applicants of the right to appeal an adverse decision
- work with the applicant to collect information necessary to evaluate the application
- certify practice performance
- reimburse applicants at establish rates for practice performance
- monitor FLEP contract compliance
- report and track accomplishments

At the National level, the Forest Service, Director of Cooperative Forestry, will:

- distribute available FLEP funding in consultation with State Foresters
- coordinate FLEP activities with State Foresters, tribes, and other interested public and private agencies, organizations, associations and organizations

At the Regional level, the Forest Service will:

- assist State Foresters with FLEP development and implementation in coordination with State Forest Stewardship Coordinating Committees, tribes and other public and private agencies, associations, and organizations.
- administer FLEP within the authorities and limitations outlined in the authorization legislation and regulations
- ensure that adequate outreach concerning FLEP is done
- conduct program reviews and evaluations

FLEP Program Population

The Forest Service periodically engages in data collection to enumerate the demographic breakdown of NIPF landowner population. The last such survey was completed in 1978 which estimated that minorities accounted for approximately six percent of NIPF landowners. The baseline data from the 1978 survey of NIPF landowners shows that whites comprised 93.3% of NIPF owners, Hispanics 0.2%, Blacks 4.6%, Native Americans/Alaska Natives 1.1%, and Asians, 0.8%. More current information on race/ethnicity, gender, and disability of NIPF owners will become available through the National Woodland Owners Survey, initiated in 2002. Initial data from this survey will be available in mid 2003. This survey will assist the Forest Service to better evaluate our success in making programs such as FLEP more available to all customers.

Several studies have disclosed that NIPF landownership patterns are changing. The Census of Agriculture which is carried out by the U.S. Department of Commerce's Bureau of the Census (Census Bureau) for example, found a significant increase in the number of Hispanic farm owners over the past 15 years, and private land forest owners may be experiencing a similar trend. The 1997 Census found that the number of farmers in the nation numbered 1,911,823, and were classified as follows: American Indian, 10,632 (0.5%); Asian/Pacific Islander, 8,731 (0.5%); African American, 18,451 (1.0%); Hispanic, 8,161 (0.4%); other non-white, 1,662 (0.1%); females, 165,101 (8.6%); and white males, 1,704,152 (89%). The difference, 8.5% of farm ownership, is believed to be in joint, partnership, corporation, or other ownership categories.

Persons with disabilities are a protected group. The Americans with Disabilities Act of 1990 (ADA) defines disability as a "physical or mental impairment that substantially limits one or more of the major life activities." However, data regarding disability status of NIPF landowners is not available. The Breaking New Ground (BNG) Resource Center at Purdue University estimates that there are approximately 500,000 farmers, ranchers, and agricultural workers who fell into the category of a physical disability that prevented them from completing essential operations on the farm. Although this information is not specific to NIPF landholders, or to the regions of the country, it is reasonable to estimate that, in general a threshold of 5 percent indicating significant population is exceeded for persons with disabilities.

Forestry Incentives Program and Forest Stewardship Program Participation

Program participation rates are compared against eligible population rates to determine equity and success of outreach efforts. Collection of information on the race/ethnicity of landowners participating in Forest Service programs has been problematic. Formal documentation of NIPF landowner participation rates has been limited. Most of the data maintained by the Forest Service and State Foresters regarding landowner participation is collected through ocular estimates. Though a debatable technique for obtaining information, such data indicates that minority participation in Forest Service NIPF educational and technical assistance programs ranges between 10% (for rural forestry assistance) and 20 % (for forest stewardship planning). Such figures when compared against agriculture census data indicates that it is likely that all customers regardless of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, marital status or family status are being served equitably.

The Forestry Incentives Program (FIP), repealed within the same legislation that authorized FLEP, provides baseline participation data regarding potential program participation by protected groups to be expected in FLEP. The table below illustrates the rate of participation by minorities and women landowners compared to the rate of participation of white landowners in FIP during fiscal year 2000 and 2001. Protected group participation in FIP accounts for 31% of the total program. While the USDA Forest Service has done well in terms of total protected group participation in FIP, shortcomings are notable in Asian Americans and Hispanic participation and were considered in the development of the FLEP rule.

Table 1: Forestry Incentives Program Participation Report for FY'2000 & FY'2001

Race	FY'2000 FIP Participation	FY'2001 FIP Participation	2000 Rate of Participation	2001 Rate of Participation
American Indian	112	185	0.2%	0.6%
Asian/Pacific Islander	36	26	0.09%	0.08%
African American	3138	2119	8.2%	7.2%
Hispanic	50	56	0.13%	0.18%
Others	135	22	0.35%	0.07%
Total				
Females	8,331	6,787	21.8%	23%
White				
Males	27,509	20,981	69%	69%
Total	38,211	29,500	100%	100%

The Forest Stewardship Program (FSP) also provides baseline participation data regarding potential program participation by protected groups to be expected in FLEP. The tables below illustrates the rate of participation by minorities and women landowners compared to the rate of participation of white landowners in FSP during fiscal year 2000 and 2001. Protected group participation in FSP accounts for 8.2% in 2000 and 19.9% in 2001, which is more than double. Decreased participation is noted for Blacks and Asians in the FSP Program. The USDA Forest Service has done well in terms of total protected group participation in FSP but the decreased participation of Blacks and Asians was noted and was considered in the development of the FLEP rule, as well as the need for strengthened outreach.

**Table 2: Participation in Forest Stewardship Program by Race
2002 and 2001 National Totals**

Yr	Hisp	White	Black	Native Amer Alaska Native	Asian	Other	Total
2000	2613	115269	4608	335	1956	650	125431
%	2.1	91.9	3.7	0.3	1.6	0.5	100.0
2001	21262	114510	4612	243	1578	651	142856
%	14.9	80.2	3.2	0.2	1.1	0.5	100.0

**Table 2a: Participation in Forest Stewardship Program by Gender (All Races)
2002 and 2001 National Totals**

Male	Female	Joint	Total
61776	17685	45989	125450
49.2	14.1	36.7	100.0
68268	18981	43774	131023
52.1	14.5	33.4	100.0

Outreach Strategy

The Forest Service as part of its communication and public notification plans will make a concerted effort to maintain and enhance outreach to all customers regardless of race,

color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, marital status or family status.

The Forest Service will work in partnership with the Office of Outreach and other agencies within the USDA to locate and provide information to all. Likewise, State Foresters and State Forest Stewardship Coordinating Committees will be directed by the Forest Service to utilize 1890 institutions, and historically Black, Hispanic and Tribal colleges and universities, and community-based organizations to improve communications with and increase awareness among protected groups and associated individuals interested and eligible to participate in FLEP.

Outreach to Academia. The Forest Service will provide a press release announcing the issuance of the new interim final rule for FLEP that will be electronically sent to universities and colleges specifically identified with a protected group. The press release will contain a contact person for obtaining further information. Mailing lists have been obtained or are being created to reach fifty-two (52) Land-Grant Universities, eighteen (18) 1890 Universities, 32 Tribal colleges and universities and a multitude of other Black, Hispanic and other colleges and universities having access to protected group constituencies.

Outreach through National Organizations. The USDA Forest Service will submit information for publication in the National newsletters of several National and regional agricultural and forestry organizations and community based associations. These include American Agri-Women, WAgN (Women's Agricultural Network), MANRRS (Minorities in Agriculture, Natural Resources, and Related Sciences), WIFE (Women Involved in Farm Economics), and the National Agri-Ability Project (between 22,000-30,000 landowners with disabilities receive the Breaking New Ground Newsletter), National Black Farmers Association (NBFA), the Federation of Southern Cooperatives, the Black Farmers & Agricultural Association (BFAA) and the National Council of American Indians and the Inter-Tribal Timber Council. National Spanish-translated press release and informational materials will be made available.

Outreach through State Forestry Organizations. The USDA Forest Service will request that State Foresters develop outreach plans specific to their state that identifies the targeted audience, purpose, and actions that they will take to reach underserved populations and limited resource landowners and contact lists (Attachment 1). State Foresters will make every effort to reach all eligible landowners through various means including newspapers, magazines, local publications, radio, personal contact, meetings, briefing sessions, newsletters, churches, organizations, community advocacy groups, etc. Special efforts will be made to distribute the information through personal mailings and contacts to potential participants who are minorities, women, or persons with disabilities, tribes, socially or economically disadvantaged and/or limited resource landowners. Through this input process, there is the opportunity for minorities, women, persons with disabilities, socially and economically disadvantaged and/or limited resource landowners to indicate how to address their natural resource concerns. State Foresters and State

forestry agencies will make significant effort to consult a diversity of landowners beforehand to ensure efficient and effective outreach and awareness activities.

Other Outreach Methods. All information regarding FLEP will be available via the USDA Forest Service Web Site and the Cooperative Forestry internet site. This will include English and Spanish versions of the press release and informational material. In addition, this information will also be printed out in hard copy for distribution.

These specialized outreach efforts combined with the general outreach efforts normally used by Cooperative Forestry Programs should ensure that NIPF landowners are informed about the contents of the final decision

USDA Farm Bill Briefings. The Forest Service in conjunction with other USDA agencies is participating in the Secretary of Agriculture's briefings on the Farm Bill. These briefings are taking place throughout the nation. The briefings are designed to connect USDA customers to agency programs and services while highlighting changes in the new Farm Bill. Special emphasis will be placed on how the USDA can better serve non-traditional and traditionally underserved customers.

Barrier Removal Provisions of the Interim Final FLEP Rule

Previous Forestry programs had several provisions, including ownership, which categorically excluded Tribes, land grants, and other NIPF landowners with larger land bases but limited resources. Previous programs were limited to only cost share activities. To that end, FLEP is available to the States as a technical, educational, and/or cost share program allowing the States to determine their strongest needs for public benefits. FLEP has removed the ownership barrier by limiting acres treated regardless of size of land ownership, as long as they qualify as an NIPF landowner. The other barrier that FLEP has removed is the fact that there is a stable source of funding for the entire length of the Farm Bill that has not happened previously.

Monitoring and Evaluation Plan

Each Regional Cooperative Forestry Staff conducts State Forestry program reviews and each review has a Title VI component. During the life of the FLEP program under this Farm Bill each Region will ensure that FLEP is also included in these reviews. The Regions will monitor the FLEP Program's accessibility and outreach to minorities, women, persons with disabilities, socially and economically disadvantaged and/or limited resource landowners and their participation in the FLEP Program. In addition, the Washington Office Cooperative Forestry Staff will be conducting reviews of the Regions and FLEP will be just one of the programs reviewed. Each Washington Office management review also contains a Title VI component.

In addition, each year an annual report will be prepared on the FLEP Program.. This report will provide information on all FLEP Program activities. Also, the Washington Office Cooperative Forestry Staff will ensure that the following information is included

in the report: monitoring participation of all groups, an evaluation of funds spent for technical, educational, and cost-share assistance for all participants. These reports will be reviewed and evaluated annually by the Cooperative Forestry Staff and with a final report submitted to Congress by September 30, 2006.

Consideration of Civil Rights Impact

In considering whether this rule would have a civil rights impact, the Forest Service reviewed guidance of the USDA Office of Civil Rights. The Forest Service analysis discloses no potential for affecting protected groups differently than the general population of NIPF landowners. Initiatives to enhance protected group participation will be addressed by the Forest Service in the FLEP rule and program development and will be the focus of State Forester and State Forest Stewardship Coordinating Committee FLEP awareness and outreach efforts. The Forest Service will direct State Foresters to develop State Forest Stewardship Coordinating Committees containing representatives of associations, institutions, organizations and individuals that have access to protected groups and engage in strengthened outreach efforts to notify protected NIPF populations and program beneficiaries.

Conclusion

Therefore, Forest Service review and analysis discloses that the interim final rule and implementation of FLEP does not meet the definition of major civil rights impacts as set forth by USDA DR 4300-4. in that the consequences of proposed policy actions which, if implemented, will negatively and disproportionately adversely affect minorities, women, or persons with disabilities who are employees, program beneficiaries or applicants for employment or program benefits in USDA conducted or assisted programs by virtue of their race, color, sex, national origin, religion, age, disability, or marital or familial status. On the contrary, FLEP has removed the ownership barrier by limiting acres treated regardless of size of land ownership, as long as they qualify as an NIPF landowner. With the lifting of the limitation on acres owned, will likely result in increased tribal and other protected group participation. This allows all small NIPF landowners the opportunity to participate in the program.

Certification

I certify that the following review and analysis has been conducted in accordance with Departmental Regulation 4300-4, "Civil Rights Impact Analysis"; 7 CFR 15d, "Nondiscrimination in Programs and Activities Conducted by USDA"; and Departmental Regulation 1512-1, "Regulatory Decision-Making Requirements." Comments and recommendations as required by these regulations have been made a part of this certified analysis.

/s/ Kathleen M. Gause

11/8/02

Kathleen Gause
Civil Rights Director
USDA Forest Service

Date

**Civil Rights Outreach Plan
For the Proposed Final Rule
Forest Lands Enhancement Program
State of _____
Forestry Division**

Targeted Audience: Hispanic, Black, American Indian, Asian, female, and disabled Non-industrial Private Forestry landowners (NIPF) of _(State).

Purpose: The purpose of this outreach plan is to educate minority, underserved, and limited resource NIPF landowners on the contents of the final rule Forest Lands Enhancement Program to ensure effective participation in the referendum process.

Actions: (Actions should include what activities and contacts that will be undertaken, such as press releases, websites, meetings, newspaper articles, radio announcements, television, flyers, contacts made with Hispanic Association of Colleges and Universities, 1890 schools, Land Grant Institutions, Tribal Colleges, local forestry organizations, local cooperatives, Women Involved in Farm Economics, other USDA agencies, etc.)