

CIVIL RIGHTS IMPACT ANALYSIS Healthy Forests Restoration Program

**Agency: US Department of Agriculture
Natural Resources Conservation Service (NRCS)**

**Subject: Civil Rights Impact Analysis
Healthy Forests Restoration Program Interim Rule**

A review of the proposed Interim Rule, Healthy Forests Restoration Program (HFRP) has been directed towards the identification of actual or potential civil rights issues. In this regard, the review analyzed the rule 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 DR 1512, "Regulatory Decision Making Requirement." The review reveals no factors indicating the final HFRP rule would have disproportionate adverse civil rights impacts for NRCS producers who are minorities, women or persons with disabilities.

Background

Title V of the Healthy Forests Restoration Act of 2003 (Act) (Pub. L. 108-148) authorizes the establishment of the Healthy Forests Reserve Program. The HFRP is a voluntary program established for the purpose of restoring and enhancing forest ecosystem to: 1) promote the recovery of threatened and endangered species, 2) improve biodiversity; and 3) enhance carbon sequestration. Program implementation has been delegated by the Secretary of Agriculture to the Natural Resources Conservation Service.

The HFRP was signed into law as part of the Healthy Forests Restoration Act of 2003, with a maximum enrollment of 2 million acres from 2004 through 2008. The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) reauthorizes the program for fiscal years 2009 through 2012.

"Safe Harbor" provisions of the Endangered Species Act will be made available to landowners enrolled in the HFRP who agree for a specified period to restore or improve their land for threatened or endangered species habitat. In exchange, they avoid future regulatory restrictions on the use of that land.

Legislative Changes

The HFRP is a voluntary program. The 2008 Farm Bill expands enrollment methods to include permanent easements and allows for 30-year contracts rather than easements for tribes. Not more than 40 percent of program funding shall be used for cost-share agreements, and not more than 60 percent may be used for easements. The Bill provides \$9.75 million for each fiscal year 2009 through 2012; funds made available for the program shall remain available until expended. The 2008 Act allows re-allocation if funds are not obligated by April 1st of the fiscal years in which funds was made available.

Civil Rights Impact Analysis

The Civil Rights Impact Analysis (CRIA) is directed towards the identification and examination of actual or potential Civil Rights implications that may adversely impact the participation of protected group members. The purpose is to identify all the various adverse implications the proposed HFRP rule will have on each affected group and rationally and reasonably dispose of each. The theory of discrimination applied to the rule is disparate impact. Disparate impact is manifested when on the surface the situation appears the same for all, but there is a different effect. The analysis evaluated the extent to which the various populations are affected by the rule, and how the impact is manifested. The review and analysis examined (a) the rule and general provision, (b) administration and development, (c) historical participation data (d) eligibility criteria, and (e) outreach strategy. The examination sought to determine:

- what segment of the population is affected by the rule;
- if all the affected groups will be provided the same opportunities to comment on the rule during the public notification period and participate in the decision-making or rulemaking process for HFRP;
- if all protected group members historically were provided the same opportunities to participate in similar NRCS programs; and
- if all protected group members were provided the same information in order to determine whether or not they wished to participate in HFRP, or any similar NRCS programs.

In accordance with DR 4300-4, a Civil Rights Impact Analysis (CRIA) is being submitted for review. The CRIA states that the revisions and clarifications to the previous regulation apply equally to all participants in the programs affected by the rule.

Based on our analysis of the rule, there is no evidence to suggest the interim rule will negatively and disproportionately affect any members of protected groups. The interim rule makes minor changes from a previously proposed rule. All programs and organizations affected by the rule operate nationwide; hence, all geographic locations would be similarly affected by the revisions to 7 C.F.R Part 250.

A. The HFRP Rule General Provision

The HFRP statute states that Secretary of Agriculture shall pay the landowner not less than 75 percent, nor more 100 percent of (as determined by Secretary) the fair market value of the land enrolled during the period the land is subject to the easement, less the fair market value of the land encumbered by the easement. (for 30-year easements, the Secretary pays not more than 75 percent FMV of the easement).

Federal agencies customarily follow the Uniform Appraisal Standards for Federal Land Acquisitions the Yellow Book when acquiring easements. The Yellow Book was developed from case law associated with condemnation cases. However, where agencies have developed alternative appraisal and valuation methodologies.

The Yellow Book requires that compensation be based upon the impact that the easement encumbrance will have upon the value of the "larger parcel", which is all land owned by the land owner that may be impacted by the easement, as determined by the appraiser. However, HFRP statutory language requires that compensation be based upon the impact to value of only the land enrolled and encumbered by the easement. NRCS has a statutory exemption from following the Yellow Book appraisal standards for voluntary conservation easement ventures in Public Law 109-59 (SAFE-TEA Act). As a voluntary conservation easement program, HFRP is encompassed by the SAFE-TEA waiver.

Section 502 allows for acreage owned by Indian Tribes to be enrolled in the program through the use of 30-year contracts. The Conservation Reserve Program and Grassland Reserve Program also use long-term rental contracts to protect environmentally sensitive lands and other lands. Both programs provide an annual rental payment to the participant. The HFRP has been authorized to make cost-share and easement payments

The NRCS is concerned about holding obligations in an un-liquidated status and disbursing them over a 30 year period. The agency is equally concerned about paying 30 years of rental payments up front when rental contracts do not have the same compliance controls in place as easements.

B. HFRP Administration and Development

The Secretary of Agriculture has delegated authority to implement HFRP to the Chief of NRCS. In addition, technical support associated with forest management practices may also be provided by the Forest Service. Section 501 of the Act provides that the program will be carried out in coordination with the Secretary of the Interior and the Secretary of Commerce. The NRCS will work closely with Fish and Wildlife Service and the National Marine Fisheries Service to further the species recovery objectives of the HFRP and to make available to HFRP program participants safe harbor or similar assurance and protection under ESA section 7(b)(4) or Section 10(a)(1), 16 U.S.C. 1536(b)(94), 1539(a)91).

The Chief may implement HFRP in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands. The Chief may determine to offer the program ecosystems, or in particular States, depending upon the extent of funding available, the identification of eligible forest ecosystems, and other considerations.

C. Historical Participation Data

Due to the non-availability of sufficient historical compatible data a barrier analysis on participation was not conducted.

D. Eligibility

To be eligible, the land must be privately owned and: 1) Restore, enhances, or measurably increase the likelihood of recovery of a threatened or endangered species; 2) improve biological diversity; 3) increase carbon sequestration.

The HFRP provides financial assistance in the form of easement payments and cost-share for specific conservation actions completed by the landowner.

Land is enrolled through easements and cost-share agreements, and must have a restoration plan.

The cost effectiveness of each agreement or easement and associated restoration plans must maximize the environmental benefits per dollar expended.

E. Outreach Strategy

The Conservation Operations Division (COD) will work in partnership with the NRCS Outreach Division to locate and provide information to protected groups. A press release announcing the issuance of the newly proposed HFRP rule 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 and information regarding the rule will be sent to land-grant Universities, 1890 Universities, HACU's, colleges and universities located in U.S. Territories, and Tribal Colleges and Universities.

The COD will work with the Outreach Division to submit information for publication in the national newsletters of several national agricultural organizations. 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 AgriAbility Project (20,000-30,000 farmers with disabilities receive their Breaking New Ground Newsletter).

Significant media outreach will be undertaken to acquaint under served producers with the provisions of HFRP. Spanish-translated press releases and informational materials will be made available.

The locally led process at the service centers level is key and provides for input from a broad range of agencies, organizations, businesses, and individuals in the local areas who have an interest in natural resource management. Through this input process there is the opportunity for minority and socially disadvantaged groups to be informed regarding HFRP. Outreach efforts are made to ensure that the diversity of residents, landowners, and land operators in the local area are well represented in this process.

States will make every effort to reach all eligible producers through various means including newspapers, magazines, local publications, radio, personal contacts, meetings, newsletters, churches, organizations, community advocacy groups, etc.

Special efforts will be made to distribute the information regarding the HFRP through personal mailings to potential participants in NRCS conservation programs who are minorities, women, or persons with disabilities.

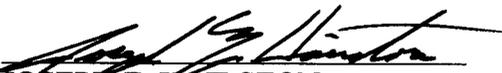
E. Conclusion

Therefore, our review of the proposed rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. When the proposed rule is published, all populations will be provided the opportunity to comment on the rule as proposed, and on the implementation of the rule. The data presented indicates women, minorities, and persons with disabilities are participating on an equitable basis in NRCS conservation programs.

Outreach and communication strategies are in place to ensure all producers will be provided the same information to allow them to make informed compliance decisions regarding the use of their lands that will affect their participation in USDA programs. The provisions of HFRP apply to all persons equally regardless of their race, color, national origin, gender, sex, or disability status.

F. 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."


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Date