



United States
Department of
Agriculture

Office of
Civil Rights

DR 4300-4

Civil Rights Impact Analysis

May 30, 2003

DR 4300-4

CIVIL RIGHTS IMPACT ANALYSIS

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U.S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C. 20250

DEPARTMENTAL REGULATION		Number: 4300-4
SUBJECT: Civil Rights Impact Analysis	DATE: May 30, 2003	
	OPI: Office of Civil Rights	

1 PURPOSE

The purpose of this regulation is to provide Department of Agriculture (USDA) agencies, Departmental Administration, and Departmental Offices with guidance on how to meet civil rights impact analysis requirements.

2 BACKGROUND

USDA civil rights policy requires each agency to analyze the civil rights impact(s) of policies, actions, or decisions that will affect the USDA work force or federally conducted and federally assisted programs and activities. A civil rights impact analysis (CRIA) facilitates the identification of the effects of eligibility criteria, methods of administration, or other agency-imposed requirements that may adversely and disproportionately impact employees or program beneficiaries based on their membership in a protected group. Proper follow-up actions based on CRIA findings can eliminate or substantially alleviate these negative effects.

3 DEFINITIONS

Within the context of this regulation, the following definitions apply:

- a Agency. A major program organizational unit of the Department with delegated authorities to deliver agricultural or food programs, activities, benefits, and services. Heads of agencies report to and receive their delegated authorities from Under or Assistant Secretaries as prescribed in 7 C.F.R. The term "Agency" does not include Departmental Administration or Departmental Offices.

- b Civil Rights Impact. The consequences of policies, actions, and decisions on the civil rights and opportunities of protected groups or classes of persons who are USDA employees or program beneficiaries.
- c Civil Rights Impact Analysis (CRIA). An analytical process used to determine the scope, intensity, direction, duration, and significance of the effects of an agency ' s proposed employment and program policies, actions, and decisions.
- d Civil Rights Implications. Information or data that suggest, or from which one may infer, that a policy, action, or decision will affect groups or classes of persons, positively or negatively, because of one or more prohibited bases.
- e Departmental Administration. The Assistant Secretary for Administration and all staff offices that receive their major delegations from the Assistant Secretary for Administration.
- f Departmental Office. A Departmental administrative (non-program) office, the head of which is a general officer or reports to an official within the Office of the Secretary and receives delegated authority under 7.C.F.R. Also referred to as a Staff Office.
- g Disparate Treatment. The less favorable treatment of a group(s) or class(es) of persons by reason of one or more prohibited bases when compared with/contrasted to another group(s) or class(es) of persons that is similarly situated.
- h Disparate Impact (Adverse Impact). Neutral employment or program policies, actions, or decisions which are applied evenhandedly (are of “general applicability”), that have the effect of excluding or otherwise adversely affecting groups or classes of persons by reason of one or more prohibited bases.
- i Employees. Individuals who apply for jobs and/or are hired by USDA and classified under Federal pay schedules. In some instances, the word “employee” may also mean individuals who apply for jobs and/or are hired by USDA recipients or contractors.
- j Expedited Clearance. An arrangement whereby an agency is authorized by the Office of Civil Rights (CR) to submit a rule, notice, or other regulatory action without a CRIA, for approval, clearance, and publication.
- k Group or Class. Multiples of similarly situated persons who may be distinguished

by their common race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetics, political beliefs, or receipt of income from any public assistance program.

- l Methods of Administration. The full range of practices, management prerogatives, application criteria, participation requirements, processes, and procedures used by management to administer federally assisted and federally conducted programs and activities within USDA.
- m Policies, Actions, and Decisions. All those prerogatives exercised by USDA management to design, plan, develop, implement, and evaluate USDA programs and activities.
- n Program Beneficiary. The person, organization, or other entity that applies for or ultimately receives or enjoys USDA services, benefits, resources and information; or the ultimate participant in programs and activities conducted by USDA (federally conducted) or administered through USDA recipients (federally assisted).
- o Program Participant. Any person or group of persons, that either benefits from or carries out activities on behalf of USDA, inclusive of ultimate program beneficiaries, primary recipients, sub-recipients, and indirect recipients.
- p Prohibited Bases. The specific grounds of discrimination banned under Federal civil rights statutes, Executive Orders, and Federal regulations, i.e., discrimination based on race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program.
- q Protected Groups. Any person, group, or class of persons protected under Federal law and Executive Order from discrimination on any prohibited basis.
- r Purpose or Effect. Intentional actions or their consequences which are specific to the occurrence of disparate treatment or disparate impact, respectively.

4 OBJECTIVES

The objectives of this regulation are to:

- a Establish procedures for the evaluation of proposed policies, actions, or decisions for potential violations of civil rights statutes, Federal regulations, or USDA policy on nondiscrimination;
- b Preclude the issuance of policies, actions, or decisions that contain eligibility criteria, methods of administration, or other agency-imposed requirements that may adversely and disproportionately impact employees or program beneficiaries because of their race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, protected genetic information, political beliefs, reprisal, or because all or a portion of an individual's income is derived from any public assistance program; and
- c Utilize CRIAs as a management tool to ensure fair and equitable service to USDA employees and beneficiaries of federally assisted and federally conducted programs and activities.

5 SPECIAL INSTRUCTIONS/CANCELLATION

This regulation replaces DR 4300-4, Civil Rights Impact Analysis, dated September 22, 1993; Appendix A of DR 1010-1, Organization, dated July 3, 1996; Guidance to Agencies, Preparing the Civil Rights Impact Analysis, dated August 18, 1998; and civil rights review requirements contained in DR 1512-1, Regulatory Decision making Requirements, dated March 14, 1997.

Processes and procedures to implement this regulation must be established within 90 days of the effective date of this regulation.

6 SCOPE

This regulation applies to all USDA agencies, Departmental Administration, and Departmental Offices.

7 RESPONSIBILITIES

- a Each agency will take the following steps to institute CRIA requirements across USDA:

- (1) Integrate civil rights technical requirements into the development of policies, programs, and activities;
- (2) Conduct sufficient analysis to prepare a written CRIA in accordance with the provisions of this regulation;
- (3) Establish internal CRIA processes and procedures; and
- (4) Certify in writing to the Assistant Secretary for Civil Rights that internal processes and procedures to implement this regulation have been established.

b Each agency will take the following actions when developing CRIAs and implementing civil rights strategies related to policies, programs, and activities:

- (1) Involve subject matter experts from the appropriate disciplines (e.g., economists, statisticians, budget analysts, civil rights analysts, program/management analysts, personnelists, etc.);
- (2) Consult with stakeholders, advisory committees, and customers, as appropriate, to obtain input prior to decision-making;
- (3) Analyze employment and program participation data by race, sex, national origin, disability, and age, as appropriate, to identify the proportion of the labor force and eligible population, respectively, that are participating in the USDA work force and in USDA programs and activities;
- (4) Identify and analyze the civil rights implications and impacts of proposed eligibility criteria, methods of administration, and other requirements associated with policies, programs, and activities on employees, recipients, and beneficiaries and develop civil rights strategies to eliminate, alleviate, or mitigate such impacts;
- (5) Refer problematic aspects of proposed policies, programs, and activities that cannot be resolved at the agency level to the Office of Civil Rights (CR) for review and guidance, with supporting documentation on potential civil rights implications or impacts;
- (6) Submit a CRIA, including a Civil Rights Certification signed by the Agency Head, on the proposed policy, program, or activity, to CR for review and a determination of CRIA sufficiency;
- (7) Coordinate and implement civil rights strategies identified in CRIAs with implementation of policies, programs, or activities; and

- (8) Monitor and evaluate the policy, program, or activity for civil rights effects after implementation.

c The CR will:

- (1) Consult, advise, and provide technical assistance to:
 - (a) Identify civil rights implications and impacts of proposed policies, programs, and activities;
 - (b) Assess the extent or severity of potential adverse civil rights impacts; and
 - (c) Make recommendations on and identify actions to eliminate, alleviate, or mitigate potential adverse civil rights impacts.
- (2) Review and determine the sufficiency of CRIAs submitted by agencies for pre-approval;
- (3) Respond to agency requests for waivers or expedited clearance of rules, notices, or other regulatory actions;
- (4) Concur on regulatory dockets that adequately address civil rights concerns;
- (5) Provide advice and technical support to the Assistant Secretary for Civil Rights on matters related to CRIA reviews and sufficiency determinations; and
- (6) Develop CRIAs and carry out the civil rights duties and tasks described in this regulation on behalf of the Office of the Secretary, Departmental Administration and Departmental Offices.

d The Assistant Secretary for Civil Rights will:

- (1) Resolve agency questions or issues regarding civil rights impacts that cannot be resolved by CR; and
- (2) Sign Form AD 116, Clearance and Approval for Departmental Issuances, subsequent to clearance by the Director, CR.

8 NOTIFICATION TO THE SECRETARY

In most instances, agencies are required to obtain authorization to reorganize or to issue a rule, notice, or other regulatory action through a Decision Memorandum to the Secretary. When authorization is sought through a Decision Memorandum, the requesting agency will consult with CR to ensure that the Decision Memorandum contains sufficient information on potential civil rights impacts that may result from the proposed action so as to properly inform the Secretary on potential civil rights impacts.

9 ACTIONS REQUIRING CRIAs

- a Agencies will complete written CRIAs on the following policy, program, and activity documents and submit them to CR for review and determinations of CRIA sufficiency:
 - (1) New, revised, or interim rules and notices to be published in the Federal Register and the Code of Federal Regulations;
 - (2) Charters for advisory committees, councils, or boards managed by the agencies on behalf of the Secretary;
 - (3) Departmental regulations, manuals, and notices;
 - (4) Proposed reorganizations requiring Departmental approval prescribed in DR 1010-1, Section 6a;
 - (5) Reductions-in-force and transfer of function proposals; and
 - (6) At the discretion of the Director, CR, other policy, program, or activity documents that have potentially adverse civil rights impacts.

- b Each agency will establish and implement processes and procedures to complete CRIAs on the following INTERNAL policy, program, and activity documents, though they do not have to be submitted to CR for review and determinations of CRIA sufficiency:
 - (1) New and revised agency-specific instructions, procedures, manuals, and other guidance published in agency directives systems;
 - (2) Advisory boards and committees that are established at the discretion of

the agency and are not mandated by statute, rule, or USDA regulation;

- (3) Budget proposals;
- (4) Grants and contracts;
- (5) Organizational changes requiring Departmental notification as prescribed in DR 1010-1, Section 6b; and
- (6) National, regional, and local special projects affecting program beneficiaries.

c Notwithstanding Section 9 b (1) above, agencies will submit internal CIVIL RIGHTS instructions, procedures, manuals, and other guidance to CR for review and clearance prior to implementation.

10 RETENTION OF CRIA RECORDS

Agencies will retain ALL CRIA documents for three years and make them available to CR and other Federal agencies upon request.

11 CIVIL RIGHTS IMPACT ANALYSIS PROCEDURES

Agencies will:

- a Summarize the proposed policy, program, or activity;
- b Identify the appropriate theory(ies) of discrimination that will be used to analyze the policy, program, or activity, i.e., disparate treatment, disparate impact;
- c Review the policy, program, or activity to determine:
 - (1) Whether or not it contains any requirement related to eligibility, benefits, services, etc., that may have the purpose or effect of excluding, limiting, or otherwise disadvantaging any group or class of persons on one or more prohibited bases; and
 - (2) Whether and the extent to which each group or class of persons may be affected potentially, positively or negatively.
- d Analyze relevant numerical and non-numerical data and information to determine

if there are significant differences in potential civil rights impacts among groups or classes of persons;

- e Describe the civil rights impacts identified in Section 11, c-d, in terms of whether or not:
 - (1) They are likely to be beneficial;
 - (2) They are likely to maintain the status quo; or
 - (3) They are likely to have an adverse impact.
- f Determine whether or not the civil rights impacts will likely affect adversely one or more groups or classes of persons, specifically:
 - (1) Whether or not the impacts will likely be disproportionate; and
 - (2) How the disproportionate impacts will likely be manifested.
- g Identify and compare/contrast alternatives that could eliminate, alleviate, or mitigate adverse and disproportionate civil rights impacts for the affected groups or classes of persons;
- h Draw conclusions and identify feasible strategies and actions that the agency could utilize to offset adverse and disproportionate civil rights impacts (short term and/or long term); and
- i Select for implementation feasible strategies and action(s) to eliminate, alleviate, or mitigate adverse and disproportionate civil rights impacts, based on overall needs and consideration of all significant factors related to the proposed policy, action, or decision.

12 CONTENTS OF AGENCY CRIA SUBMISSIONS

Each CRIA submission will contain:

- a The completed CRIA document, which reduces the requirements described in Section 11 to writing;
- b An executed Civil Rights Certification (see Figure 1);
- c A final draft/advance copy of the rule, notice, reorganization proposal, or other

regulatory action; and

- d A Cost/Benefit Analysis and other documents, as appropriate, that are a part of the regulatory docket.

13 CRIA PRE-APPROVAL

- a Each agency will submit a written CRIA to CR, along with the final draft/advance copy of the rule, notice, reorganization proposal, or other regulatory action, **PRIOR TO INITIATING THE USDA CLEARANCE PROCESS**. To obtain pre-approval, agencies should:
 - (1) Collaborate with CR in identifying civil rights issues, implications, impacts, affirmative strategies, etc., associated with each policy, program, or activity document subject to this regulation during its planning and design phases; and
 - (2) Forward the written CRIA to CR as described in Section 12.
- b CR will inform each agency of any needed additions or revisions to the CRIA or the eligibility criteria, methods of administration, or other requirements contained in or associated with the final draft/advance copy of the proposed policy, program, or activity.
- c The agency will amend the CRIA submission in accordance with feedback from CR and return it to CR for pre-approval.
- d The Director, CR, will pre-approve the CRIA submission by signing the Civil Rights Certification as the USDA reviewing official.

14 CLEARANCE

- a After obtaining pre-approval from CR, agencies may begin circulation of the docket for clearance. However, agencies will include:
 - (1) **A FULLY EXECUTED CIVIL RIGHTS CERTIFICATION IN REORGANIZATION PROPOSAL DOCKETS** (see Figure 1); and
 - (2) **BOTH A CRIA AND A FULLY EXECUTED CIVIL RIGHTS CERTIFICATION** in regulatory dockets for rules, notices, and other

actions.

- b The Director, CR, will review each docket for the fully executed Civil Rights Certification and/or CRIA. If they are included, the Director, CR, will sign the AD-116 and forward the docket to the Assistant Secretary for Civil Rights for review.
- c Where CR has authorized expedited clearance (see Section 15), agencies will include in the docket a Note to the Director, Office of Civil Rights describing the nature of the agreement with CR and the time frame in which a CRIA will be provided.

15 EXPEDITED CLEARANCE

- a Agencies are required to complete CRIAs in accordance with Sections 11-13. However, CR may agree to expedite the clearance of certain rules, notices, or other regulatory actions **PRIOR TO SUBMISSION OF A CRIA** if an Agency Head submits a final draft/advance copy of the rule, notice, or other regulatory action along with a written request. See Figure 2. Such a request must include:
 - (1) The purpose of the rule, notice, or proposed action;
 - (2) Information on who will benefit from issuance of the rule, notice, or proposed action and the manner in which they will benefit;
 - (3) The reason or rationale justifying the request for expedited clearance;
 - (4) The consequences of denial of a request to expedite the rule, notice, or proposed action; and
 - (5) A proposed deadline for completing the CRIA.
- b If the request for expedited clearance is approved, CR will either confirm the deadline submitted for completing the CRIA or negotiate a new one. It is likely that a request for expedited clearance will be approved if:
 - (1) Expedited clearance will facilitate publication of a rule or notice that must be immediately implemented to protect the health and safety of the public or to prevent or mitigate catastrophic across-the-board economic harm to domestic producers; or

- (2) The rule or notice **MUST** be promulgated within 30 days or less by order of the President or the Secretary; and
 - (3) The request for expedited clearance is timely received.
- c A request for expedited clearance **MAY NOT** be approved if the rule, notice, or other regulatory action is:
- (1) Identified in an agency ' s Planned Rulemaking Work Plan which is required by the Office of Budget and Program Analysis;
 - (2) Scheduled to be published more than 30 days after the date of the request for expedited clearance; or
 - (3) Promulgated at the discretion of the Agency Head.
- d In situations where CR agrees to expedite the clearance of a rule, notice, or other regulatory action, the agency must submit the CRIA in accordance with an agreed upon deadline. The agency will be held accountable for:
- (1) Meeting the deadline agreed upon; an
 - (2) Implementing recommendations from CR designed to eliminate, alleviate, or mitigate potential adverse and disproportionate civil rights impacts.

16 WAIVERS

- a An agency may request a waiver from the CRIA approval process (see [Figure 3](#)) if the subject matter is positive, neutral, and/or being implemented according to the requirements of a statute or treaty, and has no foreseeable adverse civil rights impacts. To request a waiver, an Agency Head must submit the final draft/advance copy of the rule, notice, or other regulatory action, along with the written request that includes the following information:
- (1) Purpose of the rule, notice, or other regulatory action;
 - (2) Information on who will benefit from issuance of the rule, notice, or other regulatory action and the manner in which they will benefit; and
 - (3) Justification for the waiver request.

- b A waiver will be granted, on a case-by-case basis, for:
 - (1) FINAL rules previously reviewed and concurred on by CR as proposed or interim rules, if no substantive modifications or additions were made in the provisions;
 - (2) Rules, notices, or other regulatory actions that deal with strictly scientific or technological matters that CLEARLY have no civil rights implications; or
 - (3) Rules, notices, or other regulatory actions that are outside the jurisdictional control of the program agency issuing the rule, notice, or other regulatory action.

17 MONITORING AND EVALUATION

Each agency will monitor and evaluate the results of strategies and/or actions it implements to address adverse and disproportionate civil rights impacts of its programs and activities as follows:

- a Monitoring and evaluation responsibilities should be coordinated with or integrated into annual business plans, civil rights strategic plans, Affirmative Employment Program Plans, Civil Rights Implementation Plans, Outreach Plans, etc.
- b Supervisors and managers should be held accountable for implementing strategies and actions to eliminate, alleviate, or mitigate adverse and disproportionate civil rights impacts via annual performance plans.

-END-

Figure A-1
CRIA Certification

This is to certify that the undersigned:

Major Responsibilities

-
- Worked with subject matter experts, including agency civil rights officials, during the planning and development of _____ (Name of proposal, rule, notice, etc.).
 - Consulted with diverse groups of stakeholders, advisory committees, and customers, as appropriate, to obtain their input prior to decision-making.
 - Identified and analyzed the civil rights implications and impacts of eligibility criteria, methods of administration, and other requirements associated with this proposal.
 - Instituted civil rights strategies to eliminate, alleviate, or mitigate adverse and disproportionate civil rights impacts identified in the CRIA.
 - Received pre-approval on this proposal from the Office of Civil Rights.

Monitoring and Evaluation

The undersigned agrees to monitor implementation on all civil rights strategies that were instituted in connection with this proposal, evaluate their effectiveness, and take follow-up action where adverse civil rights impacts persist.

Signatory

_____(Name)
_____(Title) Date: _____

Figure A-2

SAMPLE FORMAT FOR EXPEDITED CLEARANCE

TO: **XXXXX XXXXXXXX (Name)**
Director
Office of Civil Rights

FROM: **XXXXXX XXXXXX (Name)**
Administrator
XXXXX XXXX XXXXXXXXXXXXX (Agency Name)

**SUBJECT: Expedited Clearance Agreement on Proposed Reorganization:
Establishment of the Transportation Security Staff**

Purpose: The Secretary has determined that the (Name of Agency) will establish a Transportation Security Staff (TSS) to provide interagency coordination, high-level technical support and executive-level services to other USDA agencies, the Department’s Homeland Security Council and to the Secretary/Deputy Secretary on transportation-related issues. Attached is a copy of the Decision Memorandum signed by the Secretary and/or draft re-organization proposal.

Benefits: The TSS staff will identify potential and actual threats to the transportation of agricultural products, provide options to the Secretary/Deputy Secretary and USDA agencies, and coordinate agreed-upon actions that response to such threats across USDA

Reason: Due to events of September 11, 2001, and the anthrax incidents, the Secretary and the (Name of the Agency) recognize the need to establish an organization that will provide leadership and coordination of programs to respond to emergencies and combat terrorism.

Consequences: A denial of the proposed reorganization will serve only to contravene the President's Executive Order 13228, dated October 8, 2001, and the Homeland Security Presidential Directive-1, dated October 29, 2001, which directs Federal departments and agencies to make homeland security their top priority.

Proposed CRIA Agreement : The (Name of the Agency) will prepare and complete a Civil Rights Impact Analysis (CRIA) by (Suggested CRIA completion date). If the CRIA shows adverse and disproportionate impacts resulting from the proposed establishment of the TSS, we agree to work with the Office of Civil Rights to eliminate, alleviate, or mitigate such impacts.

CR Action: If you concur on the proposed reorganization, please so indicate by signing this request for expedited processing. If you concur, but find it necessary to change the CRIA completion date or add additional requirements, please so indicate below:

Concur: _____ (Signature) Date _____
Noncur: _____ (Signature) Date _____
Comments: _____

_____.

Contact: If additional information is needed, please contact _____ (Name of Agency CR Contact) at _____ (telephone number).

Figure A-3

SAMPLE FORMAT FOR CRIA WAIVER

TO: **XXXXXXXX XXXXX (Name)**
 Director
 Office of Civil Rights

FROM: XXXXX XXXXX (Name)
 Administrator
 XXXXXXXXXXXXXXXXXX

SUBJECT: **Request for CRIA Waiver**

Purpose: The _____(Name of Agency) proposes to issue as final, _____. Upon implementation, the rule will (list purpose/objectives(s) of the final rule): _____, _____, and _____.

Benefits Benefits include (list beneficiaries and describe how they will benefit):

Beneficiaries	How They Will Benefit

Justification

(Please refer to Section 16):

_____ (continue on next page is necessary.)

CR Action:

A copy of the final/advance copy is attached. Please indicate below whether or not you concur with our request for a waiver:

Concur: _____ (Signature) Date: _____

Noncur: _____ (Signature) Date: _____

Comments (If any):

Contact:

If additional information is needed, please contact _____ (Name of Agency CR contact) at _____ (telephone number).

Attachment

The final draft/advance copy of the (check one): rule notice other action is attached. (If "other action," please describe below):
