UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

DIRECTIVE 4300.4 5/5/04

CIVIL RIGHTS IMPACT ANALYSIS (CRIA)

I. PURPOSE

The purpose of this Directive is to establish Agricultural Marketing Service (AMS) policy requiring each Program to analyze, identify and address the civil rights impact(s) of proposed actions as part of their management and decision making procedures.

II. BACKGROUND

USDA's civil rights policy requires each agency to analyze the civil rights impact(s) of actions, proposed actions, decisions, or policies that affect federally assisted and federally conducted programs or the agency's workforce. 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.

III. OBJECTIVES

The objectives of this Directive are as follows:

A. Establish procedures for the evaluation of proposed actions, policies or decisions for potential violations of civil rights statutes, Federal regulations, or USDA and AMS policies on nondiscrimination.

B. Preclude the issuance of actions, policies, 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, gender, 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 the CRIA as a management tool to ensure fair and equitable employment opportunities to AMS employees and beneficiaries of services, programs and activities provided by AMS.

IV. DEFINITIONS

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

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 AMS employees or program beneficiaries.

Civil Rights Impact Analysis (CRIA) - An analytical process used to determine the scope, intensity, direction, duration, and significance of the effects of an AMS proposed employment and program policy, action and decision.

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.

Departmental Administration - The Assistant Secretary for Administration and all staff offices that receive their major delegations from the Assistant Secretary for Administration.

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 CFR; also referred to as a Staff Office.

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) or persons that are similarly situated.

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.

Employees – Individuals who apply for jobs and/or are hired by AMS 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 AMS recipients or contractors.

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.

Method 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 AMS.

Policies, Actions, and Decisions - All those prerogatives exercised by AMS management to design, plan, develop, implement, and evaluate AMS programs and activities.

Program Beneficiary - The person, organization, or other entity that applies for or ultimately receives or enjoys AMS services, benefits, resources and information; or the ultimate participant in programs and activities conducted by AMS (federally conducted) or administered through AMS recipients (federally assisted).

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.

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 part of an individual's income is derived from any public assistance program.

Protected Groups - Any person, group, or class of persons protected under Federal law and Executive Order from discrimination on any prohibited basis.

Purpose or Effect - Intentional or unintentional actions or their consequences which are specific to the occurrence of disparate treatment or disparate impact, respectively.

V. RESPONSIBILITIES

AMS will take the following steps to institute CRIA requirements throughout the agency:

A. The AMS Civil Rights Program (CRP) will:

1. Integrate civil rights technical requirements into the development of policies, programs, and activities;

2. Coordinate sufficient analysis to prepare a written CRIA in accordance with the provisions of this regulation;

3. Establish internal CRIA processes and procedures;

4. Prepare the written certification to the Assistant Secretary for Civil Rights that

internal processes and procedures to implement DR 4300-4, Civil Rights Impact Analysis, have been established;

5. Refer problematic aspects of proposed policies, programs, and activities that cannot be resolved at the agency level to the Department's Office of Civil Rights (OCR) 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 Administrator, on the proposed policy, program, or activity, to OCR 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.

B. AMS Programs will:

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 AMS work force and in AMS programs and activities; and

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.

VI. ACTIONS REQUIRING CRIAs

The CRP will complete written CRIAs on the following policy, program, and activity documents:

A. Regulations to be published in the Federal Register and the Code of Federal Regulations that have been determined by the Office of Management and Budget to be significant;

B. Charters for advisory committees, councils, or boards;

C. Proposed reorganizations requiring Departmental approval prescribed in DR 1010-1, Organization, Section 6a;

D. Reductions-in-force and transfer of function proposals;

E. New and revised instructions, procedures, manuals, and other guidance issued in the AMS directives system;

F. Grants and contracts with entities other than States that cooperate in the delivery of agency programs;

G. At the discretion of the Administrator, with the advice of the Director, CRP, other policy, program, or activity documents that have potentially adverse civil rights impacts.

Note: The CRP will submit internal civil rights instructions, procedures, manuals, and other guidance to OCR for review and clearance prior to implementation.

VII. RETENTION OF CRIA RECORDS

AMS will retain all CRIA documents for 3 years and make records available to USDA and any other Federal agencies upon request.

VIII. PROCEDURES

AMS Program Areas 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. This assessment should be discussed with the CRP as soon as possible in the planning stage;

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

E. Describe the civil rights impacts identified above in Section VIII C. 1 and 2, 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 AMS could use 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 impact, based on overall needs and consideration of all significant factors related to the proposed policy, action, or decision.

J. Each Program can review the procedures set aside in the following Departmental regulations for specific instructions:

1. DR 1010-1, Organization, dated June 11, 2003.

2. DR 4300-4, Civil Rights Impact Analysis, dated May 30, 2003.

3. DR 1512-1, Regulatory Decision-Making Requirement, dated March 14, 1997.

4. DR1041-1, Advisory Committee Management, dated February 8, 1993.

A copy of these regulations can be obtained from the CRP or on the Departmental website at http://www.usda.gov/directives.

IX. EXPEDITED CLEARANCE

A. AMS is required to complete CRIAs in accordance with DR 4300-4. However, OCR may agree to expedite the clearance of certain rules, notices, or other regulatory actions PRIOR TO SUBMISSION OF A CRIA if the Administrator submits a final draft/advance copy of the rule, notice, or other regulatory action along with a written request. 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, OCR 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 AMS' Planned Rulemaking Work Plan, which is required by the Department's 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 Administrator.

D. In situations where OCR agrees to expedite the clearance of a rule, notice, or other regulatory action, AMS must submit the CRIA in accordance with an agreed upon deadline. AMS will be held accountable for:

1. Meeting the deadline agreed upon; and

2. Implementing recommendations from the OCR designed to eliminate, alleviate, or mitigate potential adverse and disproportionate civil rights impacts.

X. WAIVERS

A. AMS may request a waiver from the CRIA approval process 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, the Administrator must submit the final draft/advance copy of the rule, notice, or other regulatory action, along with the written request to OCR that includes the following information:

1. Purpose of the rule, notice, or other regulatory action;

2. Information on who will benefit from the 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 OCR 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 agency issuing the rule, notice, or other regulatory action.

XI. ATTACHMENT/CRP CLEARANCE

The attached Clearance Sheet is only a sample of the type of document necessary for CRP clearance. Any format used is acceptable as long as the CRIA is submitted to CRP with a clearance sheet prior to request for signature for the Administrator.

XII. QUESTIONS

If you have any questions concerning CRIAs, please contact the AMS, Civil Rights Program on (202) 720-0583.

/s/

A. J. Yates
Administrator

Attachment

Civil Rights Program
Civil Rights Impact Analysis
Clearance Sheet

_____	_____
Originator	Date
_____	_____
Deputy Administrator	Date
_____	_____
Title VI Program Manager	Date
_____	_____
Constance T. Bails Director, Civil Rights Program	Date
_____	_____
A. J. Yates Administrator	Date