

Part 402 – Civil Rights Policies

Subpart B – Civil Rights Impact Analysis

402.10 Purpose

The purpose of this subpart is to provide guidance on how to meet civil rights impact analysis requirements.

402.11 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.

402.12 Definitions

- A. 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.
- B. 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.
- C. 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.
- D. 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.
- E. 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.
- F. Group or Class.—Multiples of similarly 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 receipts of income from any public assistance program.
- G. 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.
- H. Policies, Actions, and Decision.—All those prerogatives exercised by USDA management to design, plan, develop, implement, and evaluate NRCS programs and activities.

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

J. Program Participant.—Any person or group of persons, that either benefits from or carries out activities on behalf of NRCS, inclusive or ultimate program beneficiaries, primary recipients, sub-recipients, and indirect recipients.

K. 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.

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

402.13 Objectives

The objectives of this regulation are:

A. Establish procedures for evaluation of proposed policies, actions, or decisions for potential violations of civil rights statutes, Federal regulations, or NRCS policy on discrimination.

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.

C. Utilize CRIA as a management tool to ensure fair and equitable service to NRCS employees and beneficiaries of Federally-assisted and Federally-conducted program and activities.

402.14 Responsibilities

A. The following actions will be taken when developing CRIAs and implementing civil rights strategies related to NRCS 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 NRCS work force and in NRCS 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) Submit a CRIA, including a Civil Rights Certification (see Section 402.20) on the proposed policy, program, or activity, to Civil Rights Division (CRD) for review and a determination of CRIA sufficiency.
 - (6) Coordinate and implement civil rights strategies identified in CRIAs with implementation of policies, programs, or activities.
 - (7) Monitor and evaluate the policy, program, or activity for civil rights effects after implementation.
- B. The Civil Rights Division will—
- (1) Consult, advise, and provide technical assistance to—
 - (i) Identify civil rights implications and impacts of proposed policies, programs, and activities;
 - (ii) Assess the extent or severity of potential adverse civil rights impacts; and
 - (iii) 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 staff offices pre-approval. Complete a certification that states that the CRIA has been completed in accordance with departmental policies and regulations.

402.15 Actions Requiring CRIAs

- A. Staff office will complete written CRIAs on the following policy, program, and activity documents and submit them to CRD 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 of 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 functions proposals.
 - (6) At the discretion of the Director, CRD, other policy, program, or activity documents that have potential adverse civil rights impacts.
- B. Each staff office will establish and implement processes and procedures to complete CRIAs on the following INTERNAL policy, program, and activity documents, to be submitted to CRD for review and determinations of CRIA sufficiency:
- (1) New and revised NRCS-specific instructions, procedures, manuals, and other guidance published in NRCS directives systems.
 - (2) Advisory boards and committees that are established at the discretion of NRCS 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, Section 6b.
 - (6) National, regional, and local special projects affecting program beneficiaries.

402.16 Civil Rights Impact Analysis Procedures

- 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 or persons on one or more prohibited bases.
 - (2) Whether 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 in terms of whether or not:
 - (1) They are likely to be beneficial.
 - (2) They are likely to maintain the status quo.
 - (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 protected groups or classes of persons, specifically:
 - (1) Whether or not the impacts will likely be disproportionate.
 - (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 could be utilized to offset adverse and disproportionate civil rights impacts (short term and/or long term).
- 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.

402.17 Contents of Agency CRIA Submissions

Each CRIA submission will contain:

- (1) The completed CRIA document, which reduces the requirements described above to writing.
- (2) An executed Civil Rights Certification (see Section 402.20).
- (3) A final draft/advance copy of the rule, notice, reorganization proposal, or other regulatory action.
- (4) A Cost/Benefit analysis and other documents, as appropriate, that are part of the regulatory docket.

402.18 Waivers

- A. A staff office may request a waiver from the CRIA approval process (see Section 402.21) if the subject matter is positive, neutral, and/or being implemented according to the requirements of statute or treaty, and has no foreseeable adverse civil rights impacts. To request a waiver, the staff office director 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.
- (3) Justification for the waiver request.

B. A waiver will be granted, on a case-by-case basis.

402.19 Monitoring and Evaluation

Each staff office 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 be 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.

402.21 Sample Format for CRIA Waiver

TO: XXXXXXXXXXXXXXXX (Name)
Director
Civil Rights Division

FROM: XXXXXXXXXXXXXXXX (Name)
Deputy Chief
XXXXXXXXXXXXXXXXXX

SUBJECT: Request for CRIA Waiver

Purpose: The _____ (Name of Staff Office) proposes to issue as final, _____ . Upon implementation, the rule will (list purpose/objectives 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 402.16):

_____ (continue on next page if necessary)

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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 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):
