

**CIVIL RIGHTS IMPACT ANALYSIS
FOR THE INTERIM FINAL RULE:
Regional Equity**

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

Subject: Civil Rights Impact Analysis (CRIA)
Regional Equity Interim Final Rule

A review of the Regional Equity interim final rule 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 Regional Equity interim final rule would have a disproportionate adverse civil rights impact for NRCS producers who are minorities, women or persons with disabilities.

BACKGROUND

The Regional Equity provision (16 U.S.C. 3841(d)) was first introduced in the Farm Security and Rural Investment Act of 2002 (the 2002 Act) (Pub. L. 107-171), which amended the Food Security Act of 1985 (Pub. L. 99-198) to add the provision as section 1241(d), 16 U.S.C. 3841(d). Regional Equity, as established in the 2002 Act, required the Secretary to give priority for funding under conservation programs in subtitle D of the Food Security Act of 1985. The conservation programs listed under subtitle D (in the 2002 Act) included: Farm and Ranch Lands Protection Program, Grassland Reserve Program, Environmental Quality Incentives Program, Conservation Innovation Grants, Ground and Surface Water Conservation Program, Conservation of Private Grazing Land, Wildlife Habitat Incentive Program, Grassroots Source Water Protection Program, and Great Lakes Basin Program. The Conservation Reserve Program, the Wetlands Reserve Program, and the Conservation Security Program were excluded from the Regional Equity provision. Under the 2002 Regional Equity provision, those States (known as Regional Equity States) that did not receive an aggregate allocation, from the conservation programs specified in the statute, greater than \$12,000,000 were eligible to receive additional funding. The additional funding made available to Regional Equity States, in order to reach the \$12,000,000 requirement, was taken from those States that had initial aggregate funding allocations of specified conservation programs greater than \$12,000,000. In addition, Regional Equity States were required to have approved applications for the specified conservation programs in order to receive Regional Equity funding. The 2002 Act set an April 1st deadline for Regional Equity States to have priority for the funding. NRCS implemented the Regional Equity provision utilizing multiple funding procedures from fiscal year 2004 through fiscal year 2008.

LEGISLATIVE CHANGES

The 2008 Act amended the Regional Equity provision. The 2008 Act increased the funding level used to identify Regional Equity States from \$12,000,000 to \$15,000,000, established new conservation programs under subtitle D that are subject to the Regional Equity provision (Agricultural Water Enhancement Program, Conservation Stewardship Program, Chesapeake Bay Watershed Program, and Voluntary Public Access and Habitat Incentive Program), and added language requiring the consideration of the respective demand in a Regional Equity State. NRCS is developing this regulation to establish consistency and certainty in implementation procedures for the Regional Equity provision.

Specifically, the Regional Equity interim final rule will:

- In §662.1, NRCS describes the general purpose of the regulations, which is to establish NRCS implementation procedures for the Regional Equity provision.
- In §662.2, NRCS defines terms used in the rule.
- In §662.3, NRCS describes the applicability of the rule.
- And in §662.4, NRCS outlines the procedures for priority funding and allocation of program funds, in accordance with the Regional Equity provision.

CIVIL RIGHTS IMPACT ANALYSIS (CRIA)

The CRIA is directed towards the identification of actual or potential civil rights issues. The purpose is to identify adverse implications the Regional Equity interim final 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: (A) the rule and general provision, (B) administration and development, (C) historical participation data, (D) eligibility criteria, (E) outreach strategy, (F) barrier removal provisions, (G) conclusion, and (H) NRCS Civil Rights Director's certification. The examination sought to determine if all the affected groups:

- are provided the same opportunities to participate in the decision-making or rulemaking process for Regional Equity; and
- have historically been provided the same opportunities to participate in NRCS programs

A. Regional Equity General Provision

The Regional Equity provision is a funding requirement that gives priority to certain states for certain conservation program funding. States eligible to receive funding through the Regional Equity provision are those that have not received, for a given fiscal year, an aggregate allocation of at least \$15,000,000 from programs specified in the Regional Equity provision (16 U.S.C. 3841(d)).

Regional Equity affects all 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands or the Freely Associated States.

B. Administration and Development

The Regional Equity provision requires the Secretary to give priority for funding to applications in Regional Equity States. NRCS will give priority for funding applications in Regional Equity States by establishing program-specific drawing accounts for each covered program, sufficient to bring all Regional Equity States to \$15,000,000 (funding opportunity). A Regional Equity State can request funds from the program-specific drawing accounts after the State has obligated at least 90 percent of its initial program allocation.

C. Historical Participation Data

Due to the non-availability of sufficient historical compatible data, a barrier analysis on participation was not conducted. Historical data has been maintained, however it has been deemed unreliable due to the fact it does not include information on the number of program participants with disabilities, nor does it differentiate between whether small business entities are male or female owned.

D. Eligibility Criteria

No change from Farm Bill 2002.

E. Outreach and Communication Strategy

No change from Farm Bill 2002.

G. Conclusion

Our review of the Regional Equity interim final rule discloses no disproportionately adverse impact 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 information presented indicates women, minorities, and persons with disabilities are participating on an equitable basis in NRCS conservation programs.

H. Certification

I certify that the review and analysis of the 2008 Regional Equity, Interim Final Rule 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