

**CIVIL RIGHTS IMPACT ANALYSIS
FOR THE INTERIM FINAL RULE:
AGRICULTURAL MANAGEMENT ASSISTANCE PROGRAM**

Agency: US Department of Agriculture
Commodity Credit Corporation (CCC)

Subject: Civil Rights Impact Analysis
Agricultural Management Assistance Program Interim Final Rule

A review of the Agricultural Management Assistance Program (AMA) 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 AMA interim final rule would have a disproportionate adverse civil rights impact for NRCS producers who are minorities, women or persons with disabilities.

BACKGROUND

The conservation provisions of AMA are administered and implemented under the general supervision and direction of the Chief of NRCS, who is a Vice President of the Commodity Credit Corporation (CCC). Accordingly, where NRCS is mentioned in the rule it also refers to the CCC's funds, facilities, and authorities where applicable. While NRCS has leadership for the conservation provisions of AMA, other agencies have authority for different aspects of the program. The Agricultural Marketing Service (AMS) has responsibility for the organic certification cost-share program and the Risk Management Agency (RMA) has responsibility for the insurance cost-share program for mitigation of financial risk.

Through AMA, NRCS provides technical and financial assistance to participants in eligible States to address issues, such as water management, water quality, and erosion control by incorporating conservation practices into their agricultural operations. Producers may construct or improve water management structures or irrigation structures; plant trees for windbreaks or to improve water quality; and mitigate risk through production diversification or resource conservation practices, including soil erosion control, integrated pest management, or organic farming. Since AMA began in 2001, USDA has entered into 2,958 contracts, enrolled more than 480,200 acres into the program, and obligated more than \$36.1 million to help producers implement resource conservation practices on working agricultural lands.

Section 524(b) of the Federal Crop Insurance Act, as amended by Section 133 of the Agricultural Risk Protection Act of 2000, authorized AMA to provide assistance to producers in States that historically had low participation in the Federal Crop Insurance Program. These states included: Connecticut, Delaware, Maryland, Massachusetts, Maine, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. The Farm Security and Rural Investment Act of 2002 (2002 Act) made amendments to AMA to specify the eligible States and provide additional clarity to the assistance to be made available.

Following the 2002 Act, the AMA regulation (7 CFR Part 1465) was published in the Federal Register on April 9, 2003.

Section 2801 of the 2008 Act amended AMA to include Hawaii as an eligible State, and to authorize \$15 million in funding each year from fiscal year (FY) 2008 through FY 2012. NRCS has evaluated seven years of program implementation and identified opportunities to improve program administration and align AMA with other financial assistance programs administered by the Agency.

LEGISLATIVE CHANGES

NRCS is issuing an interim final rule, with request for comments, to incorporate the statutory changes resulting from the 2008 Farm Bill deliberations. The Agency is simplifying regulatory provisions to improve program efficiency and to adhere more closely to the program's statutory framework.

Specifically, Sections 2801 and 1604 of the 2008 Act amended AMA by making the following statutory changes:

1. *Section 2801(a)*. This section expands the program's eligible states to include Hawaii.
2. *Section 2801(b)(2)*. This section provides \$15 million in mandatory funding for each of fiscal years 2008 through 2012.
3. *Section 1604*. This section expands the statutory language concerning Adjusted Gross Income (AGI) requirements to encompass AMA.

The following are amendments being made to the AMA regulation, 7 C.F.R. Part 1465 to conform to the statutory requirements and provide further administrative clarifications:

1. NRCS will implement a cost-share policy that allows for cost-share payments to a participant to be *up to 75* percent of the estimated incurred cost of an eligible practice.

The current language is amended to read as follows (changes shown in italics):

“§1465.23 Cost-share payments.

(a)(1) The Federal share of cost-share payments to a participant will be *up to 75* percent of the *estimated incurred* cost of an eligible practice. In no instance shall the total financial contributions for an eligible practice from other sources exceed 100 percent of the actual cost of the practice.”

2. New language provides that “historically underserved producers” be awarded the “applicable payment rate and an additional rate that is 25 percent above the applicable rate, provided that this increase does not exceed 90 percent of the incurred costs associated with the conservation practice.”

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 AMA 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 AMA;
- have historically been provided the same opportunities to participate in NRCS programs; and
- are provided the same information to decide if they wish to participate in the AMA.

A. AMA RULE AND GENERAL PROVISION

Description of the AMA

AMA provides payments to agricultural producers to voluntarily address issues, such as water management, water quality, and erosion control by incorporating conservation practices into their farming operations. Producers may construct or improve water management structures or irrigation structures; plant trees for windbreaks or to improve water quality; and mitigate risk through production diversification or resource conservation practices, including soil erosion control, integrated pest management, or transition to organic farming. NRCS has leadership for the conservation provisions of AMA. The AMS is responsible for an organic certification cost share program and the RMA is responsible for mitigation of financial risk through an insurance cost-share program. AMA is budgeted at \$15 million per year. Funding for AMA is authorized for each fiscal year 2008 through fiscal year 2012.

B. ADMINISTRATION AND DEVELOPMENT

Application Evaluation

Applications are selected based on a State developed ranking and selection process. The ranking criteria may include:

- National, State, Tribal, and local priorities, and
- State-developed ranking criteria and process.

Producers may implement conservation practices relating to the following statutorily designated program priorities:

- Construction or improvement of water management structures or irrigation structures.
- Planting trees for windbreaks or to improve water quality.
- Mitigating risk through production diversification or resource conservation practices, including soil erosion control, integrated pest management or transition to organic farming.

Land enrolled under other conservation programs is eligible for participation, if:

- AMA is treating a different natural resource concern.
- AMA provides a higher or improved level of treatment for a similar natural resource concern than obtained with the other conservation program.

Program Delivery

The development of both an AMA plan of operations (APO) and an operation and maintenance (O&M) agreement is required when producers enter into an AMA contract. Both these documents are developed and carried out in accordance with the applicable NRCS technical guidance. The APO is the document that identifies the location and timing of conservation practices that the participant agrees to implement on eligible land in order to address the resource concerns and program purposes. The O&M agreement specifies the operation and maintenance responsibilities of the participants for conservation practices installed with AMA assistance. The O&M agreement also incorporates the Agency expectation that the participant will operate and maintain the conservation practice(s) installed under the contract for its intended purpose for the lifespan of the conservation practice, as specified in the O&M agreement. Contracts can be entered in to for a minimum duration of one year after completion of the last practice, but not more than ten years. Incentive payments are permitted under AMA. The NRCS State Conservationist, with advice from the State Technical Committee, will determine the conservation practices eligible for AMA payments.

Signup Period and Cost-share Agreement Determinations

Applications may be obtained and filed throughout the year at a USDA Service Center. The State Conservationist will distribute information on the availability of assistance, national priorities, and the State-specific goals. Information will be provided that explains the process to request assistance.

The Federal share of payments to a participant will be up to 75 percent of the estimated incurred cost or income foregone of an eligible conservation practice. “Historically underserved producers” may be awarded the “applicable rate and an additional rate that is not less than 25 percent above the applicable rate, provided that this increase does not exceed 90 percent of the incurred costs or estimated income foregone.” However, in no instance are the total financial contributions from other sources to exceed 100 percent of the estimated incurred cost of the practice.

Participants are paid based upon certification and verification of completion of the approved practice.

The total AMA payments (from NRCS, AMS, and RMA) shall not exceed \$50,000 per participant for any fiscal year. AMA participants will be subject to the Adjusted Gross Income (AGI) provisions of the 2008 Farm Bill or the Highly Erodible Land and Wetland Conservation provisions of the Food Security Act of 1985.

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

Applicants must own or operate an agricultural operation within an eligible State and agree to implement specific eligible conservation practices. Applicants must meet the 1985 Food Security Act's definition of "person."

Land eligible for AMA includes:

- Privately owned land,
- Publically owned land where:
 - The land is under private control for the contract period and is included in the participant's operating unit;
 - Conservation practices will contribute to an improvement in the identified natural resource concern; and
 - The participant has provided NRCS with written authorization from the government landowner to apply the conservation practices; or
- The land is federally recognized Tribal, BIA allotted, or Indian land.

E. Outreach and Communication Strategy

Outreach

The NRCS Director of Communications and the Director of Outreach will provide and coordinate training regarding outreach strategies necessary to inform all segments of the affected public about the AMA interim final rule. Public notification and outreach will be aggressively expanded to include news releases, radio and TV spots, publications, and brochures to ensure those historically underserved will have an equal opportunity to benefit from the interim final rule.

The Financial Assistance Programs Division (FAPD) of NRCS 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 AMA 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 or are being created to reach 52 Land-Grant Universities, seventeen (17) 1890 Land-Grant Universities, 192 HACU colleges and universities located in six (6) U.S. Territories, and 32 Tribal Colleges and Universities.

FAPD will 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 AgrAbility Project (approximately 22,000-30,000 farmers with disabilities receive the Breaking New Ground Newsletter). Significant media outreach will be undertaken to acquaint underserved producers with the AMA interim final rule. Spanish-translated press release and informational materials will be made available.

Encouraging Community Involvement and Locally Led Conservation

Local offices will continue to encourage community involvement and locally led conservation activities they have underway. Locally led conservation is helping community stakeholders to:

- Assess their natural resource conservation needs;
- Set community conservation goals;
- Develop an action plan;
- Obtain resources to carry out the plan;
- Implement solutions; and
- Measure their success.

The locally led process provides for input from a broad range of agencies, organizations, businesses, and individuals in the local area who have an interest in natural resource management and are familiar with the local resource needs and conditions. Through this input process there is the opportunity for minority and socially disadvantaged groups to indicate how to address their natural resource concerns. 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.

F. Barrier Removal Provisions of the final AMA Rule

The interim final rule incorporates features to address potential disparities for producers who are members of a protected group. Conservation payments generally provide a fairer distribution of benefits among farmers and ranchers across the nation than do other farm programs such as commodity subsidies because of:

- payment limitations, and
- a greater number of farmers and ranchers are eligible to apply to participate.

The interim final rule will address major systemic barriers for producers who have historically experience distinct disadvantages in obtaining USDA program assistance by inducing and helping them to enter farming by assisting with a higher percentage of the cost-share payments to participate. Specifically, this interim final rule provides historically underserved producers a

higher payment rate than the average producers. Historically underserved producers include limited resource, beginning, and socially disadvantaged farmers or ranchers.

A Limited Resource Farmer or Rancher meets the economic threshold and qualifies for the higher cost share if they meet the following characteristics:

- Is an individual with direct or indirect gross farm sales of not more than \$100,000 in each of the previous fiscal two years, and
- Has a total household income at or below national poverty level for a family of four, or has less than 50% of county median household income in each of the previous two years.

Beginning Farmer or Rancher means a person or legal entity who:

- Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years. This requirement applies to all members of an entity, and will materially and substantially participate in the operation of the farm or ranch.
- In the case of a contract with an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.
- In the case of a contract with an entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

A socially disadvantaged farmer or rancher is a farmer or rancher who has been subjected to racial or ethnic prejudices because of their identity as a member of a group without regard to their individual qualities.

Outreach and communication strategies will be in place to ensure all producers are provided the same information to decide if they wish to participate in AMA. NRCS will provide benefits to all producers regardless of their status as it relates to race, national origin, gender or disability.

G. Conclusion

Our review of the AMA interim final rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. An established cost-share payment rate for participating historically underserved producers that is greater than the rate available for average producers is expected to increase participation among these historically underserved groups. The data presented indicates producers who are members of the protected groups have participated in NRCS conservation programs at parity with other producers. Extrapolating from historical

participation data, it is reasonable to conclude that NRCS programs, including the AMA, will continue to be administered in a non-discriminatory manner. 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. AMA applies to all persons equally regardless of their race, color, national origin, gender, sex, or disability status. Therefore, the AMA interim final rule portends no adverse civil rights implications for women, minorities and persons with disability.

H. Certification

I certify that the review and analysis of the 2008 Agricultural Management Assistance Program, 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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9/30/08
Date