DEPARTMENT OF COMMERCE

15 CFR Part 8

[Docket No. 260108–0024]

RIN 0605–AA70

Rescinding Portions of Department of Commerce Title VI Regulations To Conform More Closely With the Statutory Text and To Implement Executive Order 14281

AGENCY: Office of Civil Rights, Department of Commerce.

ACTION: Final rule.

SUMMARY: By this rule, the Department of Commerce (Department) amends its regulations implementing Title VI of the Civil Rights Act of 1964 (Title VI) to eliminate provisions concerning disparate-impact liability and affirmative action. These amendments align the Department's regulations with Title VI's original public meaning, avoid constitutional concerns, reduce compliance costs, and serve the public interest. In addition, these revisions implement changes directed in Executive Order 14281.

DATES: The rule is effective April 16, 2026.

FOR FURTHER INFORMATION CONTACT: Daniel Sweeney, Senior Counsel, Office of the General Counsel, at (202) 482–1395.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Department is revising and rescinding portions of its regulations promulgated pursuant to Title VI, 42 U.S.C. 2000d–1, to more closely align its regulations to the language that Congress enacted in Title VI prohibiting intentionally discriminatory conduct, *see* 42 U.S.C. 2000d. The Department is cross-referencing and incorporating the reasoning of the Department of Justice (DOJ) final rule published in the **Federal Register** on December 10, 2025. 90 FR 57141. There are serious statutory and constitutional concerns with the legality of the Department's Title VI regulations, which go beyond intentional discrimination to additionally prohibit conduct having an unintentional disparate impact. This rule accordingly rescinds those portions of the regulations that prohibit conduct having a disparate impact, which are in considerable tension with both Title VI and the Constitution and do not serve the public interest.

The rule's revisions also conform to Executive Order 14281, ''*Restoring Equality of Opportunity and Meritocracy*'' (Apr. 28, 2025; 90 FR 17537). That Order states that ''[i]t is the policy of the United States to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, Federal civil rights laws, and basic American ideals.'' *Id.* at 17537. Although the Department would take this action independent of Executive Order 14281, the Order supports this action.

This rule makes clear that (i) the Department's Title VI regulations do not prohibit conduct or activities that have a disparate impact and instead prohibit only intentional discrimination, and (ii) the Department thus will not pursue Title VI disparate-impact liability against its Federal-funding recipients.

II. Discussion

A. Statutory History of Title VI

Title VI of the Civil Rights Act of 1964, as amended, provides: ''No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.'' 42 U.S.C. 2000d. Title VI also directs Federal departments and agencies that extend Federal financial assistance to ''effectuate the provisions of'' Title VI ''by issuing rules, regulations, or orders of general applicability.'' 42 U.S.C. 2000d–1. The section of Title VI that sets forth the prohibited conduct, 42 U.S.C. 2000d, prohibits intentional discrimination and makes no reference to unintentional disparate effects or impact. *See Alexander* v. *Sandoval,* 532 U.S. 275, 280 (2001) (''[I]t is . . . beyond dispute—and no party disagrees—that [Title VI] prohibits only intentional discrimination.''). The statute does not explicitly provide any Federal department or agency with authority to prohibit conduct having an unintentional disparate impact. And despite having ample opportunities, Congress has not amended Title VI to impose disparate-impact liability.

B. Regulatory History of Title VI

The Department originally published these regulations in a final rule on July 5, 1973 (38 FR 17938). The rule was issued under Section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1). Its issuance was part of a coordinated effort among Federal departments and agencies, based on recommendations from the Interagency Committee for Uniform Title VI Regulation Amendments, to clarify and standardize the application of Title VI. Shortly thereafter, the Department published a correction notice on September 4, 1973 (38 FR 23777), to fix minor typographical errors in the original publication.

In 2003, the Department added language defining ''program or activity'' and ''program'' to reflect the amendment of Title VI by the Civil Rights Restoration Act of 1987, Public Law 100–259. 68 FR 51334; *see* 15 CFR 8.3(g). Thus, beyond the required updating of the phrases ''program or activity'' and ''program'' pursuant to the Civil Rights Restoration Act, the Department has not substantively updated its Title VI regulations since 1973.

C. Relevant Supreme Court Decisions

The Supreme Court has found that Title VI, 42 U.S.C. 2000d, does not prohibit facially neutral policies that result in disparate outcomes when there is no discriminatory intent. Rather, it prohibits only intentional discrimination. In 1978, the Supreme Court found that Congress intended Title VI to prohibit ''only those racial classifications that would violate the Equal Protection Clause'' if committed by a government actor. *Regents of the Univ. of Cal.* v. *Bakke,* 438 U.S. 265, 287 (1978) (Powell, J., announcing the judgment of the Court); *id.* at 325, 328, 352–53 (Brennan, White, Marshall, and Blackmun, JJ., concurring in part and dissenting in part); *see also Students for Fair Admissions, Inc.* v. *President & Fellows of Harvard Coll.,* 600 U.S. 181, 198 n.2 (2023) (*SFFA*). Shortly before *Bakke*'s Title VI holding, the Supreme Court held that the Equal Protection Clause prohibits only intentional discrimination and that ''a law or other official act'' that has a ''racially disproportionate impact'' alone does not violate that Clause. *Washington* v. *Davis,* 426 U.S. 229, 239 (1976); *see also Vill. of Arlington Heights* v. *Metro. Hous. Dev. Corp.,* 429 U.S. 252, 265 (1977) (''Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause.''). Taken together, these Supreme Court cases establish that Title VI's statutory prohibition, like the Equal Protection Clause, extends only to intentional discrimination.

In 2001, the Supreme Court, in *Alexander* v. *Sandoval,* reaffirmed that settled understanding. *See* 532 U.S. at 280 (''[I]t is . . . beyond dispute . . . that [Title VI] prohibits only intentional discrimination.''). In *Sandoval,* the Supreme Court held that private plaintiffs lacked a private right of action to enforce DOJ's ''disparate-impact

regulations.'' *Id.* at 285–87. Although the Supreme Court had previously found a private cause of action to enforce Title VI's bar on intentional discrimination, *id.* at 279–80, that conclusion did not extend to enforcing DOJ's ''disparate-impact regulations.'' *Id.* at 285. As the Supreme Court explained, it is ''clear'' that ''the disparate-impact regulations do not simply apply'' the statutory prohibition, as the regulations ''forbid conduct that [Title VI] permits,'' so it is equally ''clear that the private right of action to enforce [Title VI] does not include a private right to enforce these regulations.'' *Id.* While the Supreme Court in *Sandoval* ''assume[d]'' without deciding that DOJ's disparate-impact regulations were valid, the Court explained that the then-current version of the regulations were in ''considerable tension'' with the Supreme Court's Title VI precedents. Similarly, the regulations did not ''authoritatively'' construe Title VI because the regulations ''forbid conduct''—namely, policies that unintentionally result in a disparate impact—that Title VI ''permits.'' *Id.* at 281–82, 284–85; *see also id.* at 286 n.6 (''[Title VI] permits the very behavior that the regulations forbid.'').

Finally, in 2024, the Supreme Court overruled *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984). *See Loper Bright Enters.* v. *Raimondo,* 603 U.S. 369, 409–12 (2024). In reaching that result, the Supreme Court made clear that ''statutes . . . have a single, best meaning'' that is '' 'fixed at the time of enactment.' '' *Id.* at 400 (quoting *Wis. Cent. Ltd.* v. *United States,* 585 U.S. 274, 284 (2018)). Thus, Title VI's bar on discrimination can have only one meaning. And under Supreme Court precedent, the single, best meaning of Title VI is that it ''prohibits only intentional discrimination'' and ''permits'' facially neutral policies that result in disparate outcomes so long as there is no discriminatory intent. *Sandoval,* 532 U.S. at 280, 286 n.6.

D. Executive Order 14281

On April 23, 2025, the President issued Executive Order 14281. This Order restated the ''bedrock principle of the United States . . . that all citizens are treated equally under the law.'' 90 FR at 17537. The Order explained that this ''principle guarantees equality of opportunity, not equal outcomes,'' and ''promises that people are treated as individuals, not components of a particular race or group.'' *Id.*

That Order also explained that disparate-impact liability ''endangers this foundational principle.'' *Id.* Disparate-impact liability, the Order reasoned, ''all but requires individuals and businesses to consider race and engage in racial balancing to avoid potentially crippling legal liability.'' *Id.* As the Order explained, disparate-impact liability ''not only undermines our national values but also runs contrary to equal protection under the law and, therefore, violates our Constitution.'' *Id.*

The Order relayed that because of these problems, ''[i]t is the policy of the United States to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, Federal civil rights laws, and basic American ideals.'' *Id.* Accordingly, this rule revises the Department's currently existing Title VI regulations, consistent with the Order's policy and purpose.

In any event, the Department would have independently initiated steps toward making these changes regardless of Executive Order 14281. Even if Executive Order 14281 did not exist, in other words, the Department would have taken steps to adopt the policy to eliminate the use of disparate-impact liability under Title VI. The Order states, and the Department firmly agrees, that a ''bedrock principle of the United States is that all citizens are treated equally under the law. This principle guarantees equality of opportunity, not equal outcomes. It promises that people are treated as individuals, not components of a particular race or group. It encourages meritocracy and a colorblind society,'' not race-, color-, or national-origin-based favoritism. 90 FR at 17537. And adherence to this principle, including in the issuance of grants, ''is essential to creating opportunity, encouraging achievement, and sustaining the American Dream.'' *Id.*

Imposing disparate-impact liability endangers these policy objectives. Disparate-impact liability also raises serious constitutional concerns, is in considerable tension with the original public meaning of Title VI, creates confusion, increases the costs of compliance, and does not serve the public interest. After considering the relevant issues and factors and weighing the relevant considerations, the Department concludes that these reasons support eliminating disparate-impact liability from the Department's Title VI regulations. In any event, the Department concludes that each reason is a separate and independent basis for eliminating disparate-impact liability from the Department's Title VI regulations.

E. Need for Rulemaking

The Department's regulation at 15 CFR 8.4, entitled ''Discrimination prohibited,'' outlines the core prohibitions against discrimination and includes several provisions that go beyond the statutory text and constitutional requirements by prohibiting facially neutral policies that have a disparate impact. Specifically, § 8.4(a) establishes the general principle that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program to which the part applies. Section 8.4(b) enumerates specific discriminatory acts that are prohibited. These include, among others, providing different services or benefits, subjecting individuals to segregation or separate treatment, restricting the enjoyment of advantages or privileges afforded to others, and using criteria or administrative methods that have the effect of discriminating. This section also prohibits recipients from selecting sites or locations for facilities with the purpose or effect of excluding individuals on prohibited grounds. Furthermore, § 8.4(b)(6) requires a recipient to take affirmative action to overcome the effects of prior discrimination. Section 8.4(c) addresses employment practices. It establishes that where a primary objective of the Federal financial assistance is to provide employment, a recipient is prohibited from discriminating in its employment practices. Even where providing employment is not a primary objective, the rule specifies that the same prohibitions apply if a recipient's discriminatory employment practices tend to exclude individuals from participation in or deny them the benefits of the federally assisted program.

There are serious statutory and constitutional concerns with the legality of the Department's Title VI disparate-impact regulations. The Department also has serious policy concerns with its current disparate-impact regulations, including that the disparate-impact standard creates confusion, undermines public confidence in the nation's civil rights laws and the rule of law, and produces burdensome litigation and compliance costs.

1. Serious Legal Concerns

In accordance with the reasoning of the DOJ final rule, this Department recognizes that there are serious statutory concerns as to whether the

Title VI statute authorizes the disparate-impact provisions of the current regulations. As summarized above, the Supreme Court's *Sandoval* decision makes clear that Title VI prohibits ''only intentional discrimination'' and ''permits'' facially neutral policies that result in disparate outcomes when there is no discriminatory intent. *Sandoval,* 532 U.S. at 280–81, 286 n.6. That is the ''single, best meaning'' of Title VI. *Loper Bright,* 603 U.S. at 400. *Sandoval* calls into serious doubt the legality of the Department's ''disparate-impact regulations.'' *Sandoval,* 532 U.S. at 281–82, 284–85 (noting that DOJ's substantially identical regulations were in ''considerable tension'' with the Supreme Court's Title VI precedents); *see also id.* at 286 n.6 (''[Title VI] permits the very behavior that the regulations forbid.''). Although *Sandoval* resolved only the question of private enforceability, subsequent cases such as *Loper Bright* have made clear that the Department cannot extend Title VI beyond its original public meaning. *See Loper Bright,* 603 U.S. at 412–13 (holding that ''courts must . . . ensur[e] that [an] agency acts within'' its statutory authority). And even in the absence of Supreme Court precedent, the Department would have concluded that the best reading of Title VI is that it prohibits only intentional discrimination.

Title VI authorizes agencies to promulgate regulations ''to effectuate'' the statute's prohibition of intentional discrimination. 42 U.S.C. 2000d–1. The current regulations' extension of prohibited conduct to include conduct with an unintentional disparate impact reaches a vastly broader scope than the statute itself. This scope is too broad to be considered a simple prophylactic measure aimed at preventing intentional discrimination. *See Sandoval,* 532 U.S. at 286 n.6 (''[Title VI] permits the very behavior that the regulations forbid.''). Thus, the disparate-impact regulations do not ''effectuate'' Title VI. 42 U.S.C. 2000d–1.

There are also serious concerns about whether the Department's Title VI regulations pass constitutional muster under the Equal Protection Clause. As the Supreme Court recently held in *SFFA,* ''the Equal Protection Clause . . . applies without regard to any differences of race, of color, or of nationality—it is universal in its application'' and the ''guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color.'' 600 U.S. at 206 (internal quotation marks omitted) (first quoting *Yick Wo* v. *Hopkins,* 118 U.S. 356, 369 (1886); and then quoting *Bakke,* 438 U.S. at 289–90 (Powell, J.)). Despite the promises of the Equal Protection Clause, a funding recipient's risk of disparate-impact liability under the Department's regulations is triggered by unintentional disparate outcomes, which the recipient may not even know about without investigation. To evaluate and avoid this risk, the funding recipient must incur investigatory costs, such as conducting an impact analysis, and is coerced to proactively consider race, color, and national origin, and potentially use it to change the unintended disparate outcomes. In short, disparate-impact liability encourages and, in some cases, requires covered entities to engage in the intentional use of race and racial balancing to eliminate those disparate outcomes by treating certain racial groups differently from others—the exact conduct the Equal Protection Clause forbids. *See id.* The serious constitutional concerns raised by these perverse incentives further confirm that the best reading of Title VI is that it prohibits only intentional discrimination and does not authorize the Department to impose disparate-impact liability. *See Edward J. DeBartolo Corp.* v. *Fla. Gulf Coast Bldg. & Constr. Trades Council,* 485 U.S. 568, 575 (1988) (''[W]here an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress.'' (citing *NLRB* v. *Catholic Bishop of Chi.,* 440 U.S. 490, 499–501, 504 (1979))).

This encouraged or coerced use of race, color, or national origin violates the Equal Protection Clause unless it survives review under the ''daunting'' strict-scrutiny standard. *SFFA,* 600 U.S. at 206; *see also Free Speech Coal., Inc.* v. *Paxton,* 145 S. Ct. 2291, 2310 (2025) (''Strict scrutiny—which requires a restriction to be the least restrictive means of achieving a compelling governmental interest—is 'the most demanding test known to constitutional law.''' (quoting *City of Boerne* v. *Flores,* 521 U.S. 507, 534 (1997))). The use of race, color, or national origin necessitated by the disparate-impact provisions runs into serious issues with the requirement of narrow tailoring to achieve a compelling interest. *SFFA,* 600 U.S. at 206–07.

Similarly, the ''affirmative action'' provision authorizes and sometimes requires the intentional use of race without requiring that this intentional use be narrowly tailored to serve a recognized compelling interest. Instead, it encourages intentional racial balancing ''to overcome the effects of'' unintended racial disparities. 28 CFR 42.104(b)(6). Thus, for substantially the same reasons as above, the ''affirmative action'' provision raises serious constitutional concerns.

As summarized above, there are serious statutory and constitutional concerns with the Department's disparate-impact regulations. But even if the regulations were consistent with the statute, the Department finds that eliminating the potential constitutional concerns addressed above would independently justify the amendment of the regulations. *Cf. U.S. Tel. Ass'n* v. *FCC,* 188 F.3d 521, 528 (D.C. Cir. 1999) (concluding it was not ''arbitrary and capricious'' to adopt a certain policy in order to ''avoid[ ] raising a non-trivial constitutional question''). And even if the regulations did not raise serious constitutional concerns, the Department finds that eliminating the costs and confusion caused by the mismatch between the statute and the disparate-impact regulations would independently justify the repeal of the regulations.

2. Serious Policy Concerns

The Department also has serious policy concerns with the Title VI regulations' imposition of disparate-impact liability. While the Department expresses its policy concerns with disparate-impact liability independent of Executive Order 14281, that Order sets forth many valid policy concerns with disparate-impact liability:

> On a practical level, disparate-impact liability has hindered businesses from making hiring and other employment decisions based on merit and skill, their needs, or the needs of their customers because of the specter that such a process might lead to disparate outcomes, and thus disparate-impact lawsuits. This has made it difficult, and in some cases impossible, for employers to use bona fide job-oriented evaluations when recruiting, which prevents job seekers from being paired with jobs to which their skills are most suited—in other words, it deprives them of opportunities for success.

90 FR at 17537. Moreover, the legal concerns identified above have caused uncertainty and confusion for Federal funding recipients as to whether and when they need to comply with the disparate-impact regulations and when they can or must consider race, color, and national origin. As explained above, *Sandoval* casts substantial doubt on the validity of the disparate-impact regulations that many Federal departments and agencies have promulgated pursuant to Title VI. *See* 532 U.S. at 280–82.

Additionally, in practice, and as explained above, disparate-impact liability leads covered entities to engage in racial balancing even as the underlying Title VI statute forbids intentional racial discrimination. This tension tends to create confusion and undermine public confidence in the nation's civil rights laws and in the rule of law itself, as the law seems to both forbid and require the same conduct.

These problems are amplified by the arbitrary nature of the racial and ethnic categories typically used to measure disparate effects, which, by virtue of their arbitrariness, typically lack a meaningful connection to a compelling interest. *See, e.g., SFFA,* 600 U.S. at 216–17 (explaining that the ''[racial] categories'' utilized by Harvard and University of North Carolina were ''themselves imprecise in many ways'' and ''the use of these opaque racial categories undermine[d], instead of promote[d], [their] goals'').

The Department has considered, among other views, the view that looking at disparate effects can sometimes be useful in uncovering or deterring subtle discrimination or indifference to unnecessary and arbitrary barriers; the view that placing a focus on disparate outcomes can help undo the impact of prior instances of intentional discrimination; the view that placing a focus on disparate outcomes is critical for advancing the Department's goals of promoting economic development and creating conditions that facilitate economic opportunities for all communities; the view that covered entities and affected individuals have already structured their policies and conduct around the disparate-impact provisions at issue; the view that meeting certain racial and/or ethnic thresholds carries benefits regarding experience, knowledge, empathy, and cooperation; and the view that the elimination of disparate-impact provisions is a disruption to the status quo that places an unnecessary and inappropriate focus on race and ethnicity. But all these alleged benefits are outweighed by the other issues and factors the Department has considered.

The Department has also considered the alternative of trying to adopt a modified version of disparate-impact liability, for example, by requiring covered entities to try to remedy disparate impacts and/or unintentional discrimination for only certain types of cases regarding education, housing, or employment; or by requiring covered entities to consider disparate impacts for special economic development and opportunity purposes. But any version of imposing liability for unintentional discrimination is inconsistent with Title VI's original public meaning, and even a modified version of disparate-impact liability would not sufficiently eliminate the Department's serious legal and policy concerns. The Department determines that any benefits from adopting alternative versions of disparate-impact liability are outweighed by the Department's legal and policy concerns. And even if possible, developing such a rule would not solve the confusion or rule-of-law concerns expressed above, nor reduce the compliance and litigation costs that covered entities face. The Department believes that the better course is to avoid the complexities and litigation associated with this alternative, which ultimately would leave some parts of the problems unaddressed and others inadequately addressed.

The Department also considered the potential reliance interests of funding recipients and others on the disparate-impact regulations. *Sandoval,* however, cast serious doubt on the regulations more than 20 years ago. And Executive Order 14281 also directed all agencies to ''deprioritize enforcement of all statutes and regulations to the extent they include disparate-impact liability,'' including specifically the Department's Title VI disparate-impact regulations. 90 FR at 17538. The Department accordingly believes that any reliance interests should be minimal and do not outweigh the Department's legal and other policy concerns. Further, each of the Department's concerns, whether considered cumulatively or separately, outweighs any reliance interests.

The Department notes that *Sandoval* has also led to a divergence between Title VI enforcement by private plaintiffs and enforcement by Federal departments and agencies. After *Sandoval,* private plaintiffs can enforce only Title VI's statutory prohibition on intentional discrimination, while the Department can continue to pursue disparate-impact liability. Repealing the disparate-impact regulations would eliminate this incongruent enforcement.

Overall, after considering the relevant issues and factors and weighing the relevant considerations, the Department finds that, regardless of the legality of the Department's disparate-impact regulations, the above summarized policy concerns, when viewed separately or cumulatively, independently justify the repeal of its disparate-impact regulations.

III. Regulatory Amendments

This rule's regulatory changes address the concerns regarding the statutory authority supporting the scope of these regulations that the Supreme Court questioned in *Sandoval* and the other legal and policy concerns discussed above, harmonize the implementing regulations' scope with the original public meaning of Title VI, promote consistent enforcement among private plaintiffs and Federal departments and agencies, and provide much needed clarity to the courts and Federal funding recipients.

For the reasons summarized above, the Department amends the following provisions in its Title VI implementing regulation that explain the particular types of ''Discrimination prohibited,'' located at 15 CFR 8.4.

A. Table Summarizing Amendments

The table below indicates the exact wording changes. For each section indicated in the left column, the text shown in the middle column is removed and the text shown in the right column is added:

Section	Remove	Add
8.4(b)(2)	Full text of paragraph: ''(2) A recipient . . . or national origin.''	''[Removed and Reserved]''.
8.4(b)(3)	''or effect'' from both places.	
8.4(b)(6)	Full text of paragraph (6), subparts (i) and (ii).	
8.4(c)(1)	''(1)'' from ''(c) Employment practices. (1) Where a primary objective of the . . . .'' In revised, remove ''(c) Employment practices, ''Such recipients and other parties . . . , develop a written affirmative action plan.''.	
8.4(c)(2)	Full text of paragraph: ''(2) In regard to . . . of beneficiaries.''.	

B. Section-by-Section Analysis

Section 8.4(b)(2)

Section 8.4(b)(2) is the current regulation's general prohibition of unintentional disparate impact. This paragraph expands prohibited conduct from purposeful discrimination to Federal funding recipients who ''utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination.'' Because this paragraph's only purpose is to extend the scope of the regulation to unintentional disparate-impact discrimination, this rule deletes this paragraph and thus amends the Department's Title VI implementing regulations to conform more closely to the scope of the original public meaning of Title VI. The rule replaces paragraph (b)(2) with a placeholder to maintain the numbering accuracy of previous citations and other references to parts of this section.

Section 8.4(b)(3)

Section 8.4(b)(3) addresses a Federal funding recipient's or applicant's selection of sites or locations of facilities. The paragraph provides that a funding recipient may not make selections with the ''purpose or effect'' of discriminating, or ''with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of'' Title VI or the Department's implementing regulations. The paragraph's two references to ''effect'' extend its scope to unintentional disparate impacts. This rule deletes both ''or effect'' references to conform paragraph (b)(3) more closely to the scope of the original public meaning of Title VI.

Section 8.4(b)(6)

Section 8.4(b)(6) deals with ''affirmative action.'' Paragraph (b)(6)(ii) authorizes affirmative action in programs even in the absence of a finding of prior discrimination in a program ''to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color or national origin.'' This provision points not to intentional discrimination, but rather to the unintentional ''effects of conditions.'' The provision consequently authorizes intentional racial classifications, racial preferences, and other race-based actions without the supporting compelling interest and narrow tailoring that the Equal Protection Clause demands. This section has long conflicted with the Equal Protection Clause.

Paragraph (b)(6)(i) *requires* that a recipient ''take affirmative action to overcome the effects of prior discrimination'' if in ''administering a program'' the ''recipient has previously discriminated.'' This provision goes well beyond the Equal Protection Clause, which permits in limited circumstances, but does not mandate, a government to take narrowly tailored action to remedy the effects of its identified past discrimination. *See, e.g., Bakke,* 438 U.S. at 307 (Powell, J.). Moreover, even putting aside the mandatory language in the provision, this provision does not require sufficient narrow tailoring to the particular past discrimination, but rather simply ''affirmative action to overcome the effects of prior discrimination.'' This provision accordingly promotes potentially illegal race discrimination to the extent there is a lack of narrow tailoring. Moreover, it problematically requires recipients to consider and use race preferences when the recipient may not want to consider or use race preferences. This is contrary to the Department's goal of promoting and defending a culture of nondiscrimination and is destructive of the public's understanding of, and faith in, the nation's civil rights laws. This rule, therefore, deletes paragraph (b)(6).

Section 8.4(c)

Section 8.4(c) addresses prohibited discriminatory employment practices. Paragraph (c)(1) prohibits intentionally discriminatory employment practices when a primary objective of the Federal financial assistance is to provide employment. Paragraph (c)(2) extends the prohibition to employment practices of the recipient even when the financial assistance primary objective ''is not to provide employment'' if discrimination in the non-funded employment practices ''tends, on the ground of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of, or to subject them to discrimination under the program.'' This paragraph prohibits not only intentional discrimination but also conduct that ''tends'' to have a discriminatory effect on a program without the primary objective of providing employment. Moreover, paragraph (c)(2)'s extension to employment practices where the Federal funding's primary objective is not to provide employment conflicts with the statutory limitation found in 42 U.S.C. 2000d–3. Section 2000d–3 states, ''[n]othing contained in [Title VI] shall be construed to authorize action under [Title VI] by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.'' *Id.; see also Johnson* v. *Transp. Agency, Santa Clara Cnty.,* 480 U.S. 616, 628 n.6 (1987) (citing the statutory limitation and noting Congress's intent that Title VI not ''impinge'' on Title VII, which prohibits discriminatory employment practices). The rule deletes paragraph (c)(2) so that the regulation more closely adheres to the original public meaning of Title VI. This rule amends the current text of paragraph (c)(1) to make a conforming edit to remove affirmative action requirements in accordance with the reasoning of the DOJ final rule and to implement a technical edit to reflect the removal of paragraph (c)(2).

C. Severability

The Department's position is that each of these amendments serves a vital and related but distinct purpose. The Department also confirms that each of the amendments is intended to operate independently of each other and that the potential invalidity of one amendment should not affect the other amendments. The Department would adopt any of the amendments independently of the invalidity of a separate amendment.

IV. Classification

A. Administrative Procedure Act

Pursuant to 5 U.S.C. 553(a)(2), the provisions of the Administrative Procedure Act requiring notice of proposed rulemaking and the opportunity for public participation are inapplicable to this rule because it relates to ''agency management or personnel or to public property, loans, grants, benefits, or contracts.''

Title VI concerns non-discrimination conditions on the receipt of Federal financial assistance, and more particularly to the receipt of Federal ''[g]rants and loans,'' ''property,'' ''personnel'' and ''[a]ny Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.'' 15 CFR 8.3(f); *see also* 15 CFR 8.5 (requiring funding recipient sign contractual assurance of compliance with Title VI); *Cummings* v. *Premier Rehab Keller, P.L.L.C.,* 596 U.S. 212, 217–18 (2022) (observing that Congress enacted Title VI ''[p]ursuant to its authority to 'fix the terms on which it shall disburse federal money' '' (internal citation omitted)). *Cf. Education Programs or Activities Receiving or Benefitting from Federal Financial*

Assistance, 82 FR 46655, 46655 (Oct. 6, 2017) (invoking the section 553(a)(2) exception to amend Title IX regulations to ''promote consistency in the enforcement of Title IX for [the Department of Agriculture] financial assistance recipients''); *Preserving Community and Neighborhood Choice,* 85 FR 47899 (Aug. 7, 2020) (invoking the exception to repeal Housing and Urban Development rule regarding Federal grantees); *Participation by Minority Business Enterprise in Department of Transportation Programs,* 53 FR 18285 (May 23, 1988) (invoking the exception to expand coverage of Department of Transportation regulation regarding Federal Aviation Administration's airport financial assistance program); *Nondiscrimination on the Basis of Handicap in Federally Assisted Programs—Suspension of Guidelines with Respect to Mass Transportation,* 46 FR 40687 (Aug. 11, 1981) (invoking the exception to suspend Department of Justice guidelines regarding prohibiting disability discrimination in transportation programs and activities receiving Federal financial assistance).

Indeed, invoking 5 U.S.C. 553(a)(2) is consistent with the Office for Management and Budget's (OMB) definition for ''Federal financial assistance'' under 2 CFR 200.1, which defines ''Federal financial assistance'' with the same categories as the Administrative Procedure Act's exception for rules ''relating to agency management or personnel or to public property, loans, grants, benefits, or contracts,'' 5 U.S.C. 553(a)(2). With potentially limited exceptions not applicable to the Department, all the forms of Federal financial assistance set forth under 2 CFR 200.1 that the Department administers would fall under the ''public property, loans, grants, benefits, or contracts'' exception.

Thus, in accordance with the reasoning of the DOJ final rule, the Department issues this final rule without prior public notice and comment or a delayed effective date under 5 U.S.C. 553(a)(2).

B. Executive Orders 12866 and 13563 (Regulatory Review)

This rulemaking is a ''significant regulatory action'' under section 3(f) of Executive Order 12866, 58 FR 51735, 51738 (Sep. 30, 1993). Accordingly, this rule has been submitted to the Office of Management and Budget (OMB) for review.

This regulation has been drafted and reviewed in accordance with Executive Order 12866 section 1(b), *id.* at 51735, and in accordance with Executive Order 13563 section 1(b), 76 FR 3821, 3821 (Jan. 18, 2011), which supplements and reaffirms the principles of Executive Order 12866. These Executive Orders direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. 58 FR at 51735; 76 FR at 3821. Executive Order 13563 also recognizes that some benefits and costs are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify. *Id.*

As explained in the preamble, the regulatory modifications this rule makes are necessary to conform Department regulations to Executive Order 14281, address serious legal concerns regarding the Department's Title VI regulation that the Supreme Court raised in *Sandoval,* harmonize the implementing regulation's scope with the scope of conduct that Congress intended Title VI to prohibit, promote consistency in enforcement among private plaintiffs and Federal departments and agencies, provide much needed clarity to courts and Federal funding recipients and beneficiaries regarding the scope of the Department's Title VI regulations, and implement the Department's general policy of minimizing unnecessary attention to individuals' racial and ethnic background(s).

Per USASpending data, the Department issued over 8,000 separate new financial assistance awards and obligated over $63 billion over the past four fiscal years (FYs 22, 23, 24, and 25). In FY2023 alone, the Department issued over 2,000 separate new financial assistance awards and obligated over $5.7 billion. The Department's Title VI-related active investigations regarding these funds and their recipients were traditionally coordinated through and conducted with other federal agencies, including the DOJ, due to the Department's External Civil Rights program being in its infancy and not having dedicated staff until recently. As a result, the Department does not have information about active investigations during that timeframe. Additionally, the Department does not track which of its investigations and compliance reviews involve solely allegations of disparate-impact discrimination. For enforcement actions that relate to both intentional discrimination and conduct having an unintentional disparate impact, the Department does not track and cannot reliably quantify the costs attributable to the varying disparate-impact portions of enforcement actions. That the existence of a disparate impact is sometimes a factor that is considered in determining whether discrimination is intentional further impedes monetizing costs and benefits. Therefore, the overall cost effect on the Department is difficult to quantify. This deregulatory action should decrease the Department's enforcement costs, however. It will also have the benefit, albeit difficult to quantify, of bringing the Department's regulations in line with the law. The Department is also unable to quantify how funding recipients will respond to the regulatory changes, but the deregulatory action should result in greater flexibility and lower compliance costs.

Although funding recipients may receive additional Federal funding from sources other than the Department, the Department does not envision that this rule will appreciably increase administrative costs or compliance costs for funding recipients who must also adhere to the regulations of another department or agency. This deregulatory action does not create any new obligations for funding recipients. On the contrary, by eliminating disparate-impact liability from the regulation, it eliminates a source of regulatory confusion, narrows the conduct prohibited, and thus lessens the costs of compliance and potential liability. Moreover, recipients who receive funds for the same program or activity from more than one Federal entity already enter into separate contractual assurances with each funding entity; such assurances already impose varying requirements that each Federal funding source deems necessary.

Based on the analysis of the practical qualitative costs and benefits noted above, the Department believes that this rule is consistent with the principles of Executive Orders 12866 and 13563, including the requirements that, to the extent permitted by law, the Department adopt a regulation only upon a reasoned determination that its benefits justify its costs and choose a regulatory approach that maximizes net benefits. *See* 58 FR at 51735; 76 FR at 3821.

C. Executive Order 14192 (Unleashing Prosperity Through Deregulation)

Executive Order 14192 requires an agency, unless prohibited by law, to identify at least 10 existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation. 90 FR 9065, 9065 (Jan. 31, 2025). In furtherance of this requirement, section 3(c) of the Order requires that ''any new incremental costs associated with new regulations shall, to the extent permitted

by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.'' The Department expects this rule to be a deregulatory action under Executive Order 14192.

D. Executive Order 13132 (Federalism)

This rule does not contain policies having federalism implications as the term is defined in Executive Order 13132. This rule will not have a substantial, direct effect on the relationship between the national government and the states, on distribution of power and responsibilities among various levels of government, or on states' policymaking discretion. States that choose to receive Federal financial assistance from the Department do so voluntarily and agree to comply with relevant statutory requirements as a condition of receiving such funding. This rule does not subject states or any other funding recipients or beneficiaries to new obligations. This rule amends and clarifies existing regulations that are required by statute. Therefore, in accordance with section 6 of Executive Order 13132, 64 FR 43255, 43257–58 (Aug. 4, 1999), the Department has determined that these amendments do not have sufficient Federalism implications to warrant the preparation of a federalism summary impact statement.

E. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public participation are not required, *see* 5 U.S.C. 553(a)(2), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. *See Or. Trollers Ass'n* v. *Gutierrez,* 452 F.3d 1104, 1123–24 (9th Cir. 2006) (noting that the RFA does not apply when an agency validly invokes an exception to the public comment requirements of 5 U.S.C. 553). Further, the Department, in accordance with 5 U.S.C. 605(b), has reviewed these regulations and certifies that the rule's changes will not have a significant economic impact on a substantial number of small entities, in large part because these regulatory changes do not impose any new substantive obligations on Federal funding recipients. The rule amends and clarifies existing regulations that are required by Title VI. The rule merely brings the Department into compliance with the Equal Protection Clause and harmonizes the scope of its regulations to conform with the scope of Title VI, which does not prohibit conduct having an unintentional disparate impact. All Federal funding recipients have been bound by the existing standards that will remain in place after this rule since their initial promulgation. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

F. Executive Order 12250

Pursuant to Executive Order 12250, the DOJ has the responsibility to ''review . . . proposed rules . . . of the Executive agencies'' implementing nondiscrimination statutes such as Title VI ''in order to identify those which are inadequate, unclear or unnecessarily inconsistent.'' Additionally, Executive Order 12250 delegated the President's responsibility to approve Title VI regulations to the Attorney General. *See* 42 U.S.C. 2000d–1. The DOJ has reviewed and approved this rule.

G. Unfunded Mandates Reform Act of 1993

The Unfunded Mandates Reform Act of 1995 (UMRA), 15 U.S.C. 1532, requires agencies to prepare several analytic statements before proposing any rule that may result in annual expenditures of $100 million by state, local, tribal governments, or the private sector. Section 4(2) of the UMRA, however, excludes from the Act's coverage any proposed or final Federal regulation that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' Accordingly, this rulemaking is not subject to the provisions of the UMRA.

H. Congressional Review Act

This rule is not a ''major rule'' as defined by the Congressional Review Act, 5 U.S.C. 804(2). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of companies based in the United States to compete with foreign-based companies in domestic and export markets. The rule merely narrows the scope of the Department's Title VI regulations to conform them to the scope of Title VI and the Equal Protection Clause. Doing so does not impose any new obligations on any recipients of Federal funding.

I. Paperwork Reduction Act

This rule will not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 15 CFR Part 8

Administrative practice and procedure, Civil rights, Equal employment opportunity, Government contracts, Grant programs, Grants administration.

Dated: April 13, 2026.

Paul Dabbar,

Deputy Secretary of Commerce.

Accordingly, for the reasons set forth above, part 8 of title 15 of the Code of Federal Regulations is amended as follows:

PART 8—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF COMMERCE—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

■ 1. The authority citation for part 8 continues to read as follows:

Authority: Sec. 602, Civil Rights Act of 1964 (42 U.S.C. 2000d–1).

■ 2. Amend § 8.4 by revising paragraphs (b) and (c) to read as follows:

§ 8.4 Discrimination prohibited.

* * * * *

(b) *Specific discriminatory acts prohibited.* (1) A recipient of Federal financial assistance, or other party subject to this part, shall not participate, directly or through contractual or other arrangements, in any act or course of conduct which, on the ground of race, color, or national origin:

(i) Denies to a person any service, financial aid, or other benefit provided under the program;

(ii) Provides any service, financial aid, or other benefit, to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subjects a person to segregation or separate or other discriminatory treatment in any matter related to his receipt (or nonreceipt) of any such service, financial aid, property, or other benefit under the program.

(iv) Restricts a person in any way in the enjoyment of services, facilities, or any other advantage, privilege, property, or benefit provided to others under the programs;

(v) Treats a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Denies a person an opportunity to participate in the program through the

provision of property or services or otherwise, or affords him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section);

(vii) Denies a person the same opportunity or consideration given others to be selected or retained or otherwise to participate as a contractor, subcontractor, or subgrantee;

(viii) Denies a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) [Reserved]

(3) In determining the site or location of facilities, a recipient or other party subject to this part may not make selections with the purpose of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this part applies, on the grounds of race, color or national origin; or with the purpose of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

(4) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided or made available in or through or utilizing a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(c) *Employment practices.* Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). The requirements applicable to construction employment under any such program shall be in addition to those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it. Federal financial assistance to programs under laws funded or administered by the Department that has as a primary objective the providing of employment include those set forth in appendix A II of this part.

[FR Doc. 2026–07477 Filed 4–15–26; 8:45 am]

BILLING CODE 3510–BP–P

DEPARTMENT OF COMMERCE

15 CFR Parts 8 and 20

[Docket No. 260107–0012]

RIN 0605–AA76

Removing Outdated Language From Regulatory Definitions of ''United States''

AGENCY: Office of Civil Rights, Department of Commerce.

ACTION: Final rule.

SUMMARY: By this rule, the Department of Commerce (Department) amends the definition of the term ''United States'' set forth in two of its regulations. Specifically, this rule removes references to ''the Canal Zone,'' which is no longer part of the United States, and makes other minor edits to ensure that the two definitions are identical. This action is necessary to ensure that the Department's regulations are accurate, up-to-date, and consistent. The intended effect is to eliminate outdated language, reduce inconsistencies across the Department's regulations, and minimize the possibility of confusion.

DATES: Effective April 16, 2026.

FOR FURTHER INFORMATION CONTACT: Daniel Sweeney, Senior Counsel, Office of the General Counsel, at (202) 482–1395.

SUPPLEMENTARY INFORMATION:

I. Background

The Department originally published the regulations at 15 CFR part 8 and 15 CFR part 20 in final rules on July 5, 1973 (38 FR 17938), and August 13, 1986 (51 FR 28926), respectively. The regulations at 15 CFR part 8 were promulgated to effectuate Section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1), which directs each Federal department and agency to issue regulations implementing the statutory prohibition on discrimination on the basis of race, color, or national origin. Similarly, the regulations at 15 CFR part 20 were promulgated to effectuate the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*), and the corresponding government-wide regulations at 45 CFR part 90, which establish a general prohibition against discrimination on the basis of age. Both 15 CFR part 8 and 15 CFR part 20 include a regulation defining the term ''United States'' to include ''the Canal Zone''—a reference to the Panama Canal Zone. *See* 15 CFR 8.3(c); 15 CFR 20.3(o). As relevant for 15 CFR part 20, the government-wide regulations at 45 CFR part 90 likewise set forth a definition of ''United States'' that includes ''the Canal Zone.'' 45 CFR part 90.4.

The Panama Canal Zone was an exclusive concession of the United States from 1903 to 1979. Thereafter, the Canal was jointly controlled by the United States and the country of Panama until 1999. Then, on December 31, 1999, the United States officially transferred full control of the Canal to Panama. The regulatory definitions of the term ''United States'' set forth in 15 CFR 8.3(c) and 15 CFR 20.3(o) have not been updated to reflect these historical developments and still indicate that the Canal Zone is part of the United States.

II. Discussion

By this rule, the Department is updating the definitions of the term ''United States'' set forth in 15 CFR 8.3(c) and 15 CFR 20.3(o) to accurately reflect the current scope of the United States and its territories and possessions. In particular, the Department is removing from both §§ 8.3(c) and 20.3(o) references to the Panama Canal Zone, as that Zone is no longer considered part of the United States. This removal will promote not only accuracy but also consistency across the Department's regulations, as 15 CFR 801.2(a), for instance, does not define ''United States'' to include the Canal Zone. *See* 15 CFR 801.2(a) (defining the term ''United States, ''when used in a geographic sense,'' to mean ''the several States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.''). This removal will, however, create some inconsistency between the Department's age discrimination regulations (15 CFR part 20) and the government-wide age discrimination regulations (45 CFR part 90), since ''United States'' is defined in 45 CFR 90.4 to include the Canal Zone. The Department nevertheless finds it appropriate to amend §§ 8.3(c) and 20.3(o) to ensure the accuracy of—and consistency throughout—the Department's own regulations.

The Department also finds it appropriate to make two other minor amendments to ensure that §§ 8.3(c) and 20.3(o) are identical. Specifically, the Department is (i) ensuring that both definitions explicitly mention the