H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it does not concern an environmental health or safety risk. Since this action does not concern a human health risk, EPA's 2026 Policy on Children's Health also does not apply. Although the establishment of this SNUR do not address an existing children's environmental health concern because the chemical uses involved are not ongoing uses, SNURs require that persons notify EPA at least 90 days before commencing manufacture (defined by statute to include import) or processing of the identified chemical substances for an activity that is designated as a significant new use by the SNUR. This notification allows EPA to assess the intended uses to identify potential risks and take appropriate actions before the activities commence.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

J. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve any technical standards subject to NTTAA section 12(d) (15 U.S.C. 272 note).

K. Congressional Review Act (CRA)

This action is subject to the CRA (5 U.S.C. 801 *et seq.*), and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: July 16, 2026.

Mary Elissa Reaves,

Director, Office of Pollution Prevention and Toxics.

For the reasons stated in the preamble, 40 CFR chapter I is amended as follows:

PART 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. Add § 721.12229 to subpart E to read as follows:

§ 721.12229 Multi-walled carbon nanotubes.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as multi-walled carbon nanotubes (PMN P–22–163) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been embedded or incorporated into a polymer matrix that itself has been reacted (cured); when embedded in a permanent solid polymer form that is not intended to undergo further processing; or when incorporated into an article. These exemptions apply unless/until the polymer matrix or article has been shredded or processed such that dust containing the substance is generated. Once the matrix or article containing the substance is shredded or processed such that dust containing the substance is generated, the requirements of this section apply.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3) through (6), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50 at the confidential site listed in the Order or at sites where batteries or the other confidential items listed in the Order containing the PMN substance are only recycled, or an APF of at least 1,000 at all other sites, prior to the receipt of exposure monitoring results, and in accordance with Table 2 of the Order once exposure monitoring results are available.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), (g)(1), (g)(3)(iii), and (g)(5). For purposes of § 721.72(g)(1), this substance may cause: eye irritation, genetic toxicity, carcinogenicity, and specific target organ toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to use the substance other than as an additive used in battery manufacture. It is a significant new use to process the substance without the use of engineering controls with an overall minimum efficiency of 94%. It is a significant new use to process for use or use the substance in the final battery when the concentration of the substance exceeds the confidential concentration listed in the Order.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 2026–14994 Filed 7–23–26; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 80

RIN 0945–AA29

Rescinding Portions of the U.S. Department of Health and Human Services Title VI Regulations To Align With the Statutory Text and Conform to Executive Order 14281

AGENCY: Office for Civil Rights, Office of the Secretary, U.S. Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: By this rule, the U.S. Department of Health and Human Services amends its regulations implementing Title VI of the Civil Rights Act of 1964 (Title VI) to remove provisions that impose or exemplify

liability based on disparate impact. These amendments align the Department's regulations with the best reading of Title VI's statutory text, avoid constitutional concerns, reduce compliance costs and uncertainty for recipients, and serve the public interest. In addition, these revisions conform to Executive Order 14281.

DATES: This final rule is effective on July 24, 2026.

FOR FURTHER INFORMATION CONTACT:

Sarah Albrecht, Acting Deputy Director, Civil Rights Division, Office for Civil Rights, U.S. Department of Health and Human Services, at (202) 240–3110 or (800) 537–7697 (TDD), or *OCRMail@hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The U.S. Department of Health and Human Services (Department or HHS) is rescinding portions of its regulations, 45 CFR part 80, promulgated pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* (Title VI), to remove disparate-impact liability and related effects-based provisions and to reflect that Title VI prohibits intentional discrimination, *see* 42 U.S.C. 2000d.

For purposes of this rule, disparate-impact liability refers to a theory under which a facially neutral policy or practice gives rise to a presumption of unlawful discrimination based on protected characteristics (*e.g.,* race or national origin) where there are disparities in outcomes among different groups. Under disparate-impact liability, this presumption would apply even without a facially discriminatory policy or practice, and even if equal opportunity is provided.

There are serious statutory and constitutional concerns with the Department's current Title VI regulatory provisions that go beyond the statutory prohibition of intentional discrimination by prohibiting conduct that has an unintentional disparate impact or outcome. *See Alexander* v. *Sandoval,* 532 U.S. 275, 280 (2001) (stating that it is ''beyond dispute'' that Title VI reaches only intentional discrimination). This rule, accordingly, removes those portions of the Department's Title VI regulations that impose or exemplify liability based on disparate impact or outcomes, which are in considerable tension with both the underlying Title VI statutory prohibition and the Constitution and do not sufficiently serve the public interest.

Consistent with Title VI's text and Supreme Court precedent, this rule: (i) removes and reserves 45 CFR 80.3(b)(2); (ii) revises 45 CFR 80.3(b)(3); (iii) removes and reserves 45 CFR 80.3(b)(6) and 80.3(c)(3); (iv) removes and reserves 45 CFR 80.5(g), 80.5(i), and 80.5(j); and (v) revises 45 CFR 80.5(h).

The rule's revisions also conform to Executive Order (E.O.) 14281, *Restoring Equality of Opportunity and Meritocracy,* 90 FR 17537 (Apr. 28, 2025). E.O. 14281 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. E.O. 14281 directs the Attorney General to, among other things, review Title VI regulations and ''initiate appropriate action to repeal or amend the implementing regulations for Title VI of the Civil Rights Act of 1964 for all agencies to the extent they contemplate disparate-impact liability.'' *Id.* at 17538. Section 3 of the E.O. specifically revokes the Presidential approvals of certain DOJ Title VI regulations that address disparate-impact liability promulgated under 42 U.S.C. 2000d–1, *id.* at 17538, which is reflected in certain provisions in HHS's Title VI regulations. Although the Department would take this regulatory action independent of E.O. 14281, the E.O. supports and reinforces the Department's approach.

This rule clarifies that Title VI prohibits only intentional discrimination, not conduct or activities that merely result in a disparate impact or outcome, and that the Department, thus, will not pursue Title VI disparate-impact liability against its Federal funding recipients. Because there is no private right of action for disparate-impact claims under Title VI, and the Department has the discretion to determine how it enforces Title VI, these modifications will not adversely affect the rights of any third party and are justified by the Department's statutory, constitutional, administrability, and policy determinations.

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, makes no reference to unintentional disparate effects or impact. Further, the Supreme Court has stated that the statute prohibits only intentional discrimination. *See Sandoval,* 532 U.S. at 280 (''[I]t is . . . beyond dispute—and no party disagrees—that [the statutory prohibition of Title VI] prohibits only intentional discrimination.''). The statute does not provide any Federal department or agency with authority to prohibit conduct having an unintentional disparate impact. And despite having ample opportunities, Congress has enacted no subsequent amendments to Title VI to impose disparate-impact liability.

B. Regulatory History of Title VI

Pursuant to E.O. 12250, *Leadership and Coordination of Nondiscrimination Laws,* ''[t]he Attorney General shall coordinate the implementation and enforcement by Executive agencies of . . . Title VI.'' 45 FR 72995, 72995 (Nov. 4, 1980). Accordingly, the Department of Justice is the lead Federal agency responsible for coordinating the implementation of Title VI's prohibition of discrimination on the basis of race, color, and national origin in programs or activities receiving Federal financial assistance. E.O. 12250 directed DOJ, among other things, to ''develop standards and procedures for taking enforcement actions and for conducting investigations and compliance reviews.'' *Id.*

Prior to the issuance of E.O. 12250, the Department, then the Department of Health, Education, and Welfare (HEW), issued its initial Title VI regulations on December 4, 1964, which included only two uses of the ''effect of'' language in the ''discrimination prohibited'' provision of the rule. *See* 29 FR 16298, 16299 (Dec. 4, 1964) (codified at 45 CFR 80.3(b)(2)). HEW's 1964 rule also included illustrative examples. One example addressed grants requiring recipients to consider the interests of all significant racial or ethnic groups in the service population. Another example prohibited recipients from taking actions calculated to bring about indirectly what it is forbidden to accomplish directly, such as using criteria that have the effect of defeating or substantially impairing the accomplishment of the objectives of the Federal financial assistance. *See id.* at 16301 (codified at 45 CFR 80.5(g)–(h)). DOJ largely adopted these model regulations, at 28 CFR 42.101 through

42.112, in 1966, which likewise contained only two instances of the ''or effect'' language at 28 CFR 42.104(b)(2). 31 FR 10265, 10266 (July 29, 1966).

In 1973, DOJ substantively amended its regulatory description of prohibited discrimination. *See* 38 FR 17955 (July 5, 1973). These substantive changes included, among other things, the addition of 28 CFR 42.104(b)(3) (which added the ''or effect'' language to an additional provision), 28 CFR 42.104(b)(6) (which introduced the ''affirmative action'' language to the regulations), and 28 CFR 42.104(c)(2) (which extends the rule to Federal financial assistance the primary objective of which is not to provide employment). *Id.* at 17955. On the same day, HEW adopted (on top of other changes) similar additions in 45 CFR 80.3(b)(3) (barring site selection criteria with the purpose or effect of discriminating on the ground of race, color or national origin), 45 CFR 80.3(b)(6) (requiring or permitting affirmative action in certain circumstances), and 45 CFR 80.3(c)(3) (addressing employment practices in programs receiving Federal financial assistance). 38 FR 17978, 17979–80 (July 5, 1973). HEW also added two illustrative examples of affirmative action. *Id.* at 17980–81 (codified at 45 CFR 80.5(i)–(j)).

In 2003, DOJ added language regarding ''program or activity'' to reflect the amendment of Title VI by the Civil Rights Restoration Act of 1987. *See* 68 FR 51334, 51364 (Aug. 26, 2003); Public Law 100–259, sec. 6, 102 Stat. 28, 31 (1988). The Department adopted similar amendments to implement the Civil Rights Restoration Act in 2005. *See* 70 FR 24314 (May 9, 2005).

In 2025, DOJ issued a final rule amending its Title VI regulations to eliminate disparate-impact liability. 90 FR 57141 (Dec. 10, 2025). First, the rule rescinded the full text of 28 CFR 42.104(b)(2), which prohibited the utilization of ''criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin.'' *Id.* Second, the rule removed the two uses of the word ''effect'' from 28 CFR 42.104(b)(3). *Id.* Third, the rule rescinded the full text of 28 CFR 42.104(b)(6). *Id.* Fourth, the rule rescinded the full text of 28 CFR 42.104(c)(2), which addresses employment practices subject to Federal financial assistance. *Id.* This rulemaking will align the Department's Title VI regulations with DOJ's updated Title VI regulations.

C. Relevant Supreme Court Decisions

The Supreme Court has held 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 held 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) (opinion of Powell, J.); *id.* at 325, 328, 352–53 (Brennan, White, Marshall, and Blackmun, JJ., concurring in part and dissenting in part). Shortly before *Bakke,* 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.''); *Pers. Adm'r of Mass.* v. *Feeney,* 442 U.S. 256, 279 (1979) (emphasizing that ''discriminatory purpose'' requires that the decision-maker acted ''because of, not merely in spite of,'' adverse effects on an identifiable group). Thus, the prohibition in Title VI section 601 (42 U.S.C. 2000d) on intentional discrimination by recipients is generally coextensive with the Equal Protection Clause standard. *See Students for Fair Admissions, Inc.* v. *President & Fellows of Harvard Coll.,* 600 U.S. 181, 198 n.2 (2023) (*SFFA*) (noting that violating the Equal Protection Clause when committed by a recipient of Federal financial assistance also constitutes a Title VI violation). 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 understanding. In *Sandoval,* the Supreme Court held that private plaintiffs lack a private right of action to enforce DOJ's then-existing ''disparate-impact regulations.'' 532 U.S. at 285–87. Although the Supreme Court had previously found an implied private cause of action to enforce Title VI section 601'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 in 42 U.S.C. 2000d, as the regulations ''forbid conduct that § 601 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.* And although the Supreme Court in *Sandoval* ''assume[d],'' without deciding, that DOJ's disparate-impact regulations were valid, the Court explained that the then-current 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 (''[42 U.S.C. 2000d] 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 doing so, 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 operative statutory prohibition can only have one best 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 E.O. 14281. E.O. 14281 restates the ''bedrock principle of the United States . . . that all citizens are treated equally under the law.'' 90 FR at 17537. It explains 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.*

E.O. 14281 also states that disparate-impact liability ''endangers this foundational principle.'' *Id.* Disparate-impact liability, it reasons, ''all but requires individuals and businesses to consider race and engage in racial balancing to avoid potentially crippling legal liability.'' *Id.* As E.O. 14281 explains, 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.*

E.O. 14281 states that, because of the problems and issues associated with disparate-impact liability, ''[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.* Section 3 of E.O. 14281 also specifically revoked prior Presidential approvals of the disparate-impact regulations promulgated under Title VI, including the Presidential approval of July 25, 1966, of 28 CFR 42.104(b)(2) and the Presidential approval of July 5, 1973, of 28 CFR 42.104(b)(3), (b)(6)(ii) and (c)(2). *Id.* Section 5 of the E.O. directed the Attorney General to ''initiate appropriate action to repeal or amend the implementing regulations for Title VI of the Civil Rights Act of 1964 for all agencies to the extent they contemplate disparate-impact liability.'' *Id.* E.O. 14281 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. *See* 90 FR at 17537. And adherence to this principle, including in the issuance of Federal financial assistance, ''is essential to creating opportunity, encouraging achievement, and sustaining the American Dream.'' *Id.* Imposing disparate-impact liability endangers these policy objectives.

Accordingly, this rule revises the Department's Title VI regulations under 45 CFR part 80, consistent with E.O. 14281's policy and purpose. The Department independently adopts the principles reflected in E.O. 14281 as a basis for this rule. In other words, the Department would have independently initiated steps toward making these changes regardless of E.O. 14281.

Disparate-impact liability also raises serious constitutional concerns, is in considerable tension with the best reading of Title VI, creates confusion and increases the costs of compliance for funding recipients, and overall does not serve the public interest. Having thoroughly examined the relevant legal, policy, and operational considerations, the Department has determined that, taken together, these reasons support eliminating disparate-impact liability from the Department's Title VI regulations. Each of those reasons also provides an independent basis for removing disparate-impact liability from the Department's Title VI regulations.

E. Need for Rulemaking

Part 80 currently includes provisions that extend beyond Title VI by imposing or illustrating disparate-impact liability. Other provisions encourage or require recipients to consider race-, color-, or national-origin-based measures when designing or administering programs. Those provisions create a material mismatch between the statute and the regulations, create incentives to engage in racial balancing, and risk encouraging conduct that may violate constitutional constraints. The Department has an independent responsibility to ensure its regulations are consistent with Title VI and to avoid administering funding conditions that exceed statutory authorization or raise serious constitutional concerns. *See Loper Bright,* 603 U.S. at 400 (explaining that statutes have a ''single, best meaning'' and courts must ensure agencies act within their statutory authority); *Edward J. DeBartolo Corp.* v. *Fla. Gulf Coast Bldg. & Constr. Trades Council,* 485 U.S. 568, 575 (1988).

Several sections exemplify the need for rulemaking. First, 45 CFR 80.3, entitled ''Discrimination prohibited,'' contains several provisions that go beyond the statute and the Constitution by prohibiting conduct or activities causing unintentional disparate impact. And in some instances, these provisions may encourage or even require unlawful discrimination labeled as ''affirmative action.'' Section 80.3(b)(2) is the general prohibition on conduct that causes a disparate impact, which states that a ''recipient . . . may not . . . utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.''

Beyond that general prohibition, 45 CFR 80.3(b)(3) addresses a Federal funding recipient's selection of the site or location of facilities and includes effects-based language that extends the scope of prohibited conduct to include conduct with an unintentional disparate impact. Section 80.3(b)(6) concerns the use of ''affirmative action'' and provides that funding recipients may (and sometimes must) use race, color, or national origin to overcome unintentional disparate ''effects.'' Additionally, 45 CFR 80.3(c) addresses prohibited discriminatory employment practices and extends beyond intentional discrimination to prohibit conduct that ''tends'' to have a discriminatory effect.

Similarly, the Department's regulations at 45 CFR 80.5, entitled ''Illustrative application,'' contain several examples of conduct or activities causing an unintentional disparate impact that are prohibited or of circumstances in which affirmative action is required or permitted (*e.g.,* ''due consideration'' for ''all significant racial or ethnic groups'' (paragraph 80.5(g)); criteria with the ''effect of defeating'' or ''substantially impairing'' objectives (paragraph 80.5(h)); ''additional steps'' to make benefits ''fully available,'' including ''special arrangements . . . to 'insure' groups are ''adequately served'' (paragraph 80.5(i)); ''special consideration to race'' where benefits are ''not in fact . . . equally available,'' including ''special recruitment policies'' (paragraph 80.5(j))).

Overall, there are serious statutory and constitutional concerns with the Department's Title VI disparate-impact regulations. The Department also has serious policy concerns with these provisions because they inject substantial legal uncertainty into recipients' obligations, erode public confidence in the administration of the nation's civil rights laws, and impose significant and often unnecessary compliance, investigative, and litigation burdens. These amendments clarify that, consistent with Title VI and governing precedent, part 80 prohibits only intentional discrimination.

1. Serious Legal Concerns

There are serious statutory concerns as to whether Title VI authorizes the disparate-impact provisions of the current regulations. As the Supreme Court has made clear, 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, 286 n.6. That is the ''single, best meaning'' of Title VI. *See Loper Bright,* 603 U.S. at 400. *Sandoval* casts serious doubt on the continued validity of the Department's ''disparate-impact regulations.'' *See Sandoval,* 532 U.S. at 281–82, 284–85 (noting that the DOJ's then-existing regulations were in ''considerable tension'' with the Supreme Court's Title VI precedents); *see also id.* at 286 n.6 (''[42 U.S.C. 2000d] permits the very behavior that the regulations forbid.'').

Although *Sandoval* resolved only the question of private enforceability of Title VI, subsequent cases, such as *Loper Bright,* have made clear that the Department cannot extend Title VI beyond its best meaning. *See* 603 U.S. at 412–13 (holding that ''courts must . . . ensur[e] that [an] agency acts within'' its statutory authority). Even in the absence of Supreme Court precedent, the Department would read Title VI to prohibit 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' prohibition of conduct having 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 (''[42 U.S.C. 2000d] permits the very behavior that the regulations forbid.''). Thus, the disparate-impact regulations do not ''effectuate'' Title VI. *See* 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) (quoting *Yick Wo* v. *Hopkins,* 118 U.S. 356, 369 (1886), and *Bakke,* 438 U.S. at 289–90 (Powell, J.)); *see also Adarand Constructors, Inc.* v. *Peña,* 515 U.S. 200, 227 (1995) (''[T]he . . . Fourteenth Amendment[] to the Constitution protect[s] persons, not groups.''). Despite the promises of the Equal Protection Clause, a funding recipient's risk of disparate-impact liability under the Department's current 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, in practice, revise policies related to race, color, and national origin disparities, even when the original policy is neutral and adopted without discriminatory intent.

In short, disparate-impact liability encourages and, in some cases, requires funding recipients 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 that the Equal Protection Clause forbids. *See SFFA,* 600 U.S. at 206–07; *Adarand,* 515 U.S. at 227. 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.,* 485 U.S. at 575 (''[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 Chicago,* 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,* 606 U.S. 461, 484 (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))); *Adarand,* 515 U.S. at 227 (''All racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny.''). 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'' provisions authorize and sometimes require the intentional use of race without requiring that this intentional use be narrowly tailored to serve a recognized compelling interest. Instead, they encourage intentional racial balancing ''to overcome the effects of'' unintended racial disparities. *See, e.g.,* 45 CFR 80.3(b)(6). Thus, for substantially the same reasons as above, the ''affirmative action'' provisions raise serious constitutional concerns.

As summarized above, there are serious statutory and constitutional concerns with the Department's disparate-impact regulations. Even assuming the regulations were otherwise legal, the Department concludes that avoiding the potential constitutional concerns above would independently support these amendments. *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 to ''avoid[ ] raising a non-trivial constitutional question''). Separately, 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 revising these regulations.

2. Serious Policy Concerns

The Department also has serious policy concerns with the imposition of disparate-impact liability. Although the Department expresses its policy concerns with disparate-impact liability independent of E.O. 14281, that E.O. sets forth valid policy considerations concerning disparate-impact liability. As noted in section 1 of E.O. 14281, ''[o]n 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.'' 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. 532 U.S. at 280–82.

Additionally in practice, and as explained above, disparate-impact liability can create incentives for funding recipients to engage in racial balancing (*i.e.,* considering race to reduce perceived enforcement risk), even though Title VI forbids intentional discrimination on the basis of race, color, and national origin. This tension creates confusion and undermines public confidence in both 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 in the racial preference programs at issue were ''themselves imprecise in many ways'' and ''the use of these opaque racial categories undermine[d], instead of promote[d], [their] goals''). In practice, this dynamic can shape how recipients structure and describe program design, outreach, and recruitment, sometimes in explicitly race-focused terms, because they anticipate that compliance will be evaluated through demographic ''effects'' metrics. For example, certain Departmental program guidance has historically encouraged recipients to address ''diversity'' in ways that can generate pressure toward race-based decision-making. *See, e.g.,* National Institutes of Health Grants Policy Statement, Section 11.3.3.4 (Dec. 2021), *https://grants.nih.gov/grants/policy/nihgps/nihgps_2021.pdf* (recipient-facing grants administration guidance requiring a ''Recruitment Plan to Enhance Diversity,'' which includes, inter alia, ''diversify[ing] their student and faculty populations to enhance the participation of individuals from groups that are underrepresented in the bio-medical, clinical, behavioral and social sciences, such as . . . [i]ndividuals from racial and ethnic groups that have been shown by the National Science Foundation to be underrepresented in health-related sciences on a national basis''). The Department believes that these policy concerns independently justify repealing certain parts of its regulations to cure this confusion, remove the incentive for funding recipients to engage in racial balancing, and maintain clarity and public confidence in the nation's civil rights laws.

The Department has considered the view that looking at disparate effects can sometimes be useful in uncovering or deterring subtle intentional discrimination or intentional indifference to unnecessary and arbitrary barriers. But that view's alleged benefits are outweighed by other issues and factors that the Department has considered. And in any event, eliminating disparate-impact liability does not preclude the use of data on disparate outcomes to help prove intentional discrimination. Indeed, under provisions of the Department's Title VI regulations, which the current amendments do not alter, ''recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of and participants in federally-assisted programs.'' 45 CFR 80.6(b). Both the Department and private litigants may rely on such data as a potential indicator of intentional discrimination. This use of statistical disparity to help establish, as an evidentiary matter, liability for intentional discrimination materially differs from using it to impose liability for conduct having an unintentional disparate impact.

The Department has also considered the alternative of trying to adopt a modified version of disparate-impact liability, for example, by requiring funding recipients to remedy unintentional disparate effects for only certain types of cases, such as in medical research or medical education. But any version of liability for conduct producing unintentional disparate effects is inconsistent with the best reading of Title VI. Regardless, even a modified version of disparate-impact liability would not 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 legal and policy concerns described above. 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 funding recipients face. The Department believes that the better course is to avoid the complexities and costs associated with this alternative, even if eliminating disparate-impact liability may leave some disparate outcomes unremedied absent proof of discriminatory intent.

The Department has considered the potential reliance interests of funding recipients and other stakeholders on the existing disparate-impact regulations. *Sandoval* cast serious doubt on the continuing viability of the Title VI disparate-impact regulations more than twenty-five years ago. At least since *Sandoval,* the Department's enforcement of its Title VI disparate-impact regulations has been minimal and sporadic and subject to the Department's discretion as to whether to pursue such claims or not. Moreover, E.O. 14281 directed all agencies to ''deprioritize enforcement of all statutes and regulations to the extent they include disparate-impact liability,'' including the Department's Title VI disparate-impact regulations. 90 FR at 17538. The Department accordingly believes that the existing reliance interests are minimal and do not outweigh the Department's legal and other policy concerns. Further, each of the Department's concerns, whether considered individually or cumulatively, outweighs any reliance interests.

While there may be some difference between a private litigant's ability to pursue a discrimination claim under Title VI and the Department's authority to enforce Title VI and its implementing regulations, the Department notes that *Sandoval* has also led to unwarranted 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's existing regulations could be read to allow administrative pursuit of disparate-impact liability. Repealing the disparate-impact regulations would eliminate this unwarranted incongruence.

Overall, the Department has weighed the relevant issues and factors and finds that the above-summarized policy concerns, when viewed individually or cumulatively, justify the repeal of its disparate-impact regulations addressed in this final rule. That conclusion is independent of the Department's statutory and constitutional concerns.

III. Regulatory Amendments

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

For the reasons summarized above, the Department amends the following provisions in its Title VI implementing regulations, located at 45 CFR 80.3 and 80.5.

A. Table Summarizing Amendments

The table below reflects the final wording changes carried into the revised regulatory text. 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 or otherwise reflected in the final revised text.

Section	Remove	Add
80.3(b)(2)	Full text of paragraph: "(2) A recipient . . . or national origin"	"[Reserved]".
80.3(b)(3)	"effect" and "or effect" from both places	"purpose" in place of the first use of "effect".
	"a" before "facilities"	
	"programs"	"program" in place of "programs".
80.3(b)(6)	Full text of paragraph (6), including subparts (i) and (ii)	"[Reserved]".
80.3(c)(3)	Full text of paragraph: "(3) Where a primary objective of . . . beneficiaries.".	"[Reserved]".
80.5(g)	Full text of paragraph (g)	"[Reserved]".
80.5(h)	Full text of the second sentence of paragraph (h).	
80.5(i)	Full text of paragraph (i)	"[Reserved]".
80.5(j)	Full text of paragraph (j)	"[Reserved]".

B. Section-by-Section Analysis

1. Section 80.3(b)(2)

Section 80.3(b)(2) contains a general prohibition of conduct having an unintentional disparate impact. It imposes liability on Federal funding recipients who ''utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.'' Because 45 CFR 80.3(b)(2)'s principal purpose is to prohibit unintentional disparate impact, this rule removes this paragraph in its entirety. Thus, it amends the Department's Title VI implementing regulations to conform to Title VI and to address the legal and policy considerations and determinations described above. The rule replaces paragraph (b)(2) with a placeholder to maintain numbering accuracy.

2. Section 80.3(b)(3)

Section 80.3(b)(3) addresses a Federal funding recipient's or applicant's selection of the site or location of facilities. It provides that a funding recipient may not make selections with the ''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 ''effect'' references and replaces the first reference to ''effect'' with ''purpose'' to conform paragraph (b)(3) more closely to Title VI and to address the legal and policy considerations and determinations described in this document.

3. Section 80.3(b)(6)

Section 80.3(b)(6) deals with ''affirmative action.'' Paragraph (b)(6)(ii) authorizes affirmative action 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.'' It consequently encourages intentional race-, color-, or national-origin-based classifications, preferences, and other actions without specifying the compelling governmental interest and the narrow tailoring that the Equal Protection Clause demands. The Department has determined that this provision is unlawful under the Equal Protection Clause.

Paragraph (b)(6)(i) requires that a recipient ''must take affirmative action to overcome the effects of prior discrimination'' if, in ''administering a program,'' the funding ''recipient has previously discriminated against persons on the ground of race, color, or national origin.'' This provision goes beyond the Equal Protection Clause, which permits, 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, this provision does not expressly require narrow tailoring to counter particular past discrimination, but rather simply ''affirmative action to overcome the effects of prior discrimination.'' This provision accordingly promotes potentially illegal race, color, and national origin discrimination. Moreover, in some instances, it may even coerce recipients, despite their own preferences, to consider and even adopt race-based preferences. This is contrary to the Department's goal of promoting and ensuring nondiscrimination and is destructive to the public's understanding of and faith in the nation's civil rights laws. This rule, therefore, removes and reserves paragraph (b)(6).

4. Section 80.3(c)(3)

Section 80.3(c) addresses prohibited discriminatory employment practices. Paragraph (c)(1) prohibits intentionally discriminatory employment practices in a program when a primary objective of the Federal financial assistance that program receives is to provide employment. Paragraph (c)(3) extends the prohibition on discrimination to employment practices of the funding recipient, even where providing employment is not a ''primary objective'' of the financial assistance, if discrimination in the non-funded ''employment practices of the recipient or other persons subject to the regulation tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies.'' The ''tends . . . to exclude'' formulation extends beyond intentional discrimination to encompass effects-based and disparate-impact theories, which the Department is eliminating from this regulation for the legal and policy reasons described above.

Additionally, the Department notes that paragraph (c)(3)'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. That section states that ''[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.'' 42 U.S.C. 2000d–3; *see also Johnson* v. *Transp. Agency, Santa Clara Cnty.,* 480 U.S. 616, 627–28 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)(3) to more closely adhere to Title VI and to address the legal and policy considerations and determinations described above.

5. Section 80.5(g)

Section 80.5(g) provides as an illustrative example that ''[e]ach applicant for a grant for the construction of educational television facilities is required to provide an assurance that it will, in its broadcast services, give due consideration to the interests of all significant racial or ethnic groups within the population to be served by the applicant.'' This example functions as a directive to structure program delivery around racial or ethnic group interests. Section 80.5(g) thus promotes and requires race- and ethnicity-based compliance activities, contrary to the legal principles discussed throughout this rule and contrary to the principles set forth in E.O. 14281 that ''all citizens are treated equally under the law,'' guaranteeing ''equality of opportunity, not equal outcomes'' and ''promis[ing] that people are treated as individuals, not components of a particular race or group.'' The Department accordingly removes this example from Section 80.5 and reserves paragraph (g).

6. Section 80.5(h)

Section 80.5(h) states that ''[a] recipient may not take action that is calculated to bring about indirectly what this regulation forbids it to accomplish directly'' and illustrates this prohibition with a disparate-impact example: ''a State . . . may not base its selections or approvals on criteria which have the effect of defeating or of substantially impairing accomplishments of the objectives of the Federal assistance as respects individuals of a particular race, color or national origin.'' The first sentence of 45 CFR 80.5(h) should be read as an anti-circumvention, anti-pretext principle that prohibits ''calculated'' (*i.e.,* intentional) actions, but the second sentence employs an effects test, making it an example of disparate impact. Accordingly, in this rule, the Department removes that second sentence.

7. Section 80.5(i)

Section 80.5(i) provides an example of where, pursuant to 45 CFR 80.3(b)(6), affirmative action would be required: ''In some situations . . . the consequences of [past discriminatory] practices continue to impede the full availability of a benefit . . . it will become necessary under the requirement stated in (i) of 45 CFR 80.3(b)(6) for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subject to discrimination . . . for example, special arrangements for obtaining referrals or making selections which will insure that groups previously subjected to discrimination are adequately served.'' As framed, the example encourages intentional racial or nationality classifications, preferences, and other actions without requiring the compelling governmental interest and the narrow tailoring that the Equal Protection Clause demands. This example, accordingly, promotes potentially illegal race and national-origin discrimination. And, in some instances, it may coerce recipients to consider and use racial or national-origin preferences when the recipient does not desire to do so. This is contrary to the Department's goal of promoting and ensuring nondiscrimination and is destructive to the public's understanding of and faith in the nation's civil rights laws. In addition, the example is based upon the requirement set forth in current 45 CFR 80.3(b)(6)(i), which the Department is rescinding. For those reasons, the Department removes and reserves 45 CFR 80.5(i).

8. Section 80.5(j)

Section 80.5(j) provides an example of affirmative action that is permissible even in the absence of past discrimination, as set forth in 45 CFR 80.3(b)(6)(ii): ''Even though an applicant or recipient has never used discriminatory policies, the services and benefits . . . may not in fact be equally available to some racial or nationality groups. In such circumstances, an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits . . . more widely available to such groups, not then being adequately served. For example . . . it may establish special recruitment policies . . . and take other steps to provide that group with more adequate service.'' As with 45 CFR 80.3(b)(6)(ii), this example illustrates not intentional discrimination, but rather conduct that has unintentional disparate effects. It consequently encourages intentional racial classifications, preferences, and other race-based actions without requiring the compelling governmental interest and the narrow tailoring that the Equal Protection Clause requires, and without any past discrimination that might justify such remedial actions. For the reasons set forth above, the Department removes and reserves paragraph (j).

IV. Severability

The Department believes that each of the amendments described by this rule serves a vital, related, but distinct purpose. Each amendment is intended to operate independently of the others. It is the Department's intent 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.

V. Regulatory Certifications

A. Administrative Procedure Act

The Department issues this final rule without prior public notice and comment under 5 U.S.C. 553(a)(2), which excludes from section 553's notice-and-comment requirements matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

Title VI concerns nondiscrimination conditions on the receipt of Federal financial assistance, and relates 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.'' 45 CFR 80.13(f); *see also* 45 CFR 80.4 (requiring applications for Federal financial assistance to ''contain or be accompanied by an 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)); *Nat'l Fed'n of Indep. Bus.* v. *Sebelius,* 567 U.S. 519, 577 (2012) (''if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously'') (quoting *Pennhurst State Sch. & Hosp.* v. *Halderman,* 451 U.S. 1, 17 (1981)). *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 U.S. Department of Agriculture's] financial assistance recipients''); *Preserving Community and Neighborhood Choice,* 85 FR 47899 (Aug. 7, 2020) (invoking the exception to repeal U.S. Department of Housing and Urban Development's 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 U.S. Department of Transportation's 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 DOJ guidelines regarding prohibiting disability discrimination in transportation programs and activities receiving Federal financial assistance).

The Department's definition of Federal financial assistance under Title VI is found at 45 CFR 80.13(f), which provides that such assistance includes: ''(1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.'' The Department has carefully reviewed the categories of activities listed in the 5 U.S.C. 553(a)(2) exception to notice-and-comment rulemaking, the definition of Federal financial assistance at 45 CFR 80.13(f), and the types of Federal financial assistance provided by the Department. Based on this review, the Department has concluded that the categories of exempt activities in the Administrative Procedure Act encompass all the categories contained in the Department's definition at 45 CFR 80.13(f) and all types of Federal financial assistance provided by the Department. Thus, 5 U.S.C. 553(a)(2) applies to this rulemaking.

First, 45 CFR 80.13(f)(1)'s reference to ''grants and loans of Federal funds'' is covered by 5 U.S.C. 553(a)(2)'s inclusion of ''a matter relating to . . . loans [and] grants'' in the exemption from the requirements of section 553. Second, the inclusion of ''the grant or donation of Federal property and interests in property'' as Federal financial assistance under 45 CFR 80.13(f)(2) is covered by the exemption in 5 U.S.C. 553(a)(2) for ''a matter relating to . . . public property [or] grants.'' Third, Federal financial assistance in the form of ''the detail of Federal personnel'' under 45 CFR 80.13(f)(3) is covered by 5 U.S.C. 553(a)(2)'s exception for ''a matter relating to agency management or personnel.'' Furthermore, the detailing of Federal personnel occurs within the context of, or in lieu of, funds disbursed under grants, which are explicitly covered in 5 U.S.C. 553(a)(2). Fourth, 45 CFR 80.13(f)(4)'s inclusion of ''the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient'' as Federal financial assistance is encompassed by 5 U.S.C. 553(a)(2)'s exception for ''a matter relating to . . . public property.'' Fifth, 45 CFR 80.13(f)(5)'s inclusion of ''any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance'' as Federal financial assistance falls within and is covered by 5 U.S.C. 553(a)(2)'s exemption for ''a matter relating to . . . personnel or to public property, loans, grants, benefits, or contracts.''

Indeed, the original HEW Title VI regulations, adopted just months after the passage of the Civil Rights Act of 1964, were finalized without notice and comment. *See Nondiscrimination in Federally-Assisted Programs of the Department of Health, Education, and Welfare—Effectuation of Title VI of the Civil Rights Act of 1964,* 29 FR 16298 (Dec. 4, 1964). Moreover, in 1964 and 1966, several other Federal agencies published their Title VI regulations without notice and comment. *See* 29 FR 16274 (U.S. Department of Agriculture); 29 FR 16287 (General Services Administration); 29 FR 16280 (Housing and Home Finance Agency); 29 FR 16293 (U.S. Department of Interior); 29 FR 16284 (U.S. Department of Labor); 29 FR 16305 (National Science Foundation); 31 FR 10265 (DOJ). These rulemakings support applying the 5 U.S.C. 553(a)(2) exception here.[1]

Further, invoking 5 U.S.C. 553(a)(2) is consistent with guidance issued by the Office of Management and Budget (OMB) 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 under section 553(a)(2) of the Administrative Procedure Act.

Finally, because 5 U.S.C. 553(a)(2) applies to section 553 as a whole, section 553(d)'s delayed-effective-date requirement does not apply.

B. Executive Order 12250

E.O. 12250, 45 FR 72995 (Nov. 4, 1980), directs the Attorney General to coordinate the implementation and enforcement by Federal agencies of Title VI of the Civil Rights Act of 1964 and related nondiscrimination authorities. E.O. 12250 also delegates to the Attorney General the approval function vested in the President by section 602 of Title VI, 42 U.S.C. 2000d–1, for rules, regulations, and orders of general applicability issued to effectuate Title VI. Consistent with E.O. 12250 and 42 U.S.C. 2000d–1, DOJ has reviewed and approved this final rule.

C. Executive Orders 12866 and 13563 (Regulatory Review)

The Department has determined that this rulemaking is a ''significant regulatory action'' under section 3(f) of E.O. 12866, 58 FR 51735, 51738 (Oct. 4, 1993), but it is not significant under section 3(f)(1). Accordingly, this rule has been submitted to OMB for review.

This regulation has been drafted and reviewed in accordance with E.O. 12866 section 1(b), *id.* at 51735, and in accordance with E.O. 13563 section 1(b), 76 FR 3821, 3821 (Jan. 21, 2011), which supplements and reaffirms the principles of E.O. 12866. These Orders direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

[1] Although none of the original rules provide an explanation for foregoing notice and comment, they provide support for the position that the original public meaning of ''Federal financial assistance'' in Title VI was understood to fall within the categories in section 553(a)(2). *See Wisconsin Cent. Ltd.* v. *United States,* 585 U.S. 274, 277 (2018) (''[O]ur job is to interpret the words consistent with their ordinary meaning . . . at the time Congress enacted the statute.'') (cleaned up). The Department acknowledges that, subsequently, it did conduct notice-and-comment rulemaking to make certain amendments to its Title VI rules in part 80, pursuant to a policy adopted by the Department in 1971 that waived the APA's statutory exemption from procedural rulemaking requirements for rules and regulations relating to public property, loans, grants, benefits, or contracts and instructed that the APA's good cause exception be used sparingly (Richardson Waiver). 36 FR 2532 (Feb. 5, 1971). The Richardson Waiver, thus, required the Department to use the APA's notice and comment rulemaking procedures for these types of matters. The Richardson Waiver has been rescinded. *See Policy on Adhering to the Text of the Administrative Procedure Act,* 90 FR 11029 (Mar. 3, 2025).

approaches that maximize net benefits. 58 FR at 51735; 76 FR at 3821. E.O. 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 qualitative values that are difficult or impossible to quantify. *Id.*

As explained above, the regulatory modifications this rule makes are necessary to conform the Department's Title VI regulations to the statute as described in *Sandoval,* to harmonize the implementing regulations with Title VI, to address serious constitutional concerns under the Equal Protection Clause, to promote appropriate consistency in enforcement among private plaintiffs and Federal departments and agencies, and to provide much-needed clarity to courts and Federal funding recipients and beneficiaries regarding the scope of the Department's Title VI regulations. Indeed, with respect to 45 CFR 80.3(c) of the Department's Title VI implementing regulations, the changes this rule makes are necessary to bring the regulations into compliance with 42 U.S.C. 2000d–3. In short, this rule is necessary to conform the Department's regulations to existing statutory law, as interpreted by the Supreme Court.

Data limitations make the costs and benefits of the rule difficult to quantify. The Department does not maintain data that would allow it to identify, across its full portfolio of Federal financial assistance, the subset of awards, recipients, program activities, or compliance actions that would be affected by revisions to this rule. Nevertheless, because Title VI operates as a condition on Federal financial assistance, the scale of the Department's overall awards provides contextual information about the breadth of the funding environment in which the rule's clarified standard may apply, even though it does not measure the rule's incremental economic impact. Over the past four fiscal years, the Department has issued approximately 251,992 separate awards totaling approximately $7.42 trillion. In FY 2025 alone, the Department issued approximately 47,656 separate awards totaling $2.02 trillion.[2] These aggregate figures are provided solely to describe the overall magnitude of the Department's financial assistance programs; they are not an estimate of the share of awards or activities subject to Title VI compliance issues addressed by this rule.

The Department does not track which of its investigations and compliance reviews involve solely allegations of disparate impact. 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 disparate-impact-related portions of enforcement actions. In addition, disparate-outcome evidence may be considered in evaluating intentional discrimination, which further prevents reliable separation and monetization of ''disparate-impact-only'' costs and benefits. Accordingly, the Department cannot reliably quantify the incremental enforcement costs associated with disparate-impact provisions, or the corresponding cost savings from removing those provisions.

Notwithstanding these data limitations, the Department expects that this deregulatory action will reduce enforcement and administrative burden by narrowing the operative legal standards, eliminating effects-based presumptions and associated lines of inquiry, and improving administrability and predictability for both the Department and regulated parties. The Department also expects to derive non-quantifiable benefits from aligning its implementation and enforcement posture with governing law and eliminating obligations for recipients to adopt race-based measures to manage effects-based outcomes. The Department likewise cannot quantify ex ante how recipients will adjust policies and compliance practices in response to these revisions. However, the Department anticipates that clarifying the applicable standard and removing effects-based requirements will provide recipients with greater operational flexibility and lower compliance and documentation costs, including reducing the need for outcome-tracking, impact analyses, and related remedial adjustments undertaken solely to mitigate disparate-impact risk.

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 scope of prohibited conduct, 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 separate contractual assurances with each funding entity. *See, e.g.,* 45 CFR 80.4. These contractual assurances already impose varying requirements that each Federal funding source deems necessary, and recipients will remain subject to any applicable assurances and regulations imposed by other Federal funding agencies. And in any event, the Department notes that other agencies are currently amending their regulations to align with the changes made in DOJ's rule, so the Department anticipates that there will be little, if any, disparity in Federal requirements regarding disparate-impact liability going forward.

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 E.O. 12866 and E.O. 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.

D. Executive Order 14192 (Unleashing Prosperity Through Deregulation)

E.O. 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 (Feb. 6, 2025). In furtherance of this requirement, section 3(c) of the E.O. 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.'' *Id.* This rule eliminates unnecessary regulation by revising the Department's current Title VI regulations, which extend prohibited conduct to include unintentional disparate impacts and thus expand the scope of those regulations to a vastly broader range of conduct than the statute prohibits. Accordingly, the Department expects this rule to be a deregulatory action under E.O. 14192.

E. Executive Order 14294 (Fighting Overcriminalization in Federal Regulations)

E.O. 14294 requires agencies promulgating regulations with criminal regulatory offenses potentially subject to criminal enforcement to ''explicitly describe the conduct subject to criminal enforcement, the authorizing statutes, and the mens rea standard applicable to'' each element of those offenses. 90 FR 20363, 20363 (May 14, 2025). This rule does not impose a criminal regulatory offense; thus, E.O. 14294's requirements do not apply.

[2] *See https://www.usaspending.gov/agency/department-of-health-and-human-services?fy=2025.*

F. Executive Order 13132 (Federalism)

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 Title VI implementing regulations. Therefore, in accordance with section 6 of E.O. 13132, 64 FR 43255, 43257–58 (Aug. 10, 1999), the Department has determined that these amendments do not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement.

G. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and (b)(2) of E.O. 12988 to specify provisions in clear language. *See* 61 FR 4729, 4731–32 (Feb. 7, 1996). Pursuant to section 3(b)(1)(I) of the E.O., *id.* at 4731, nothing in this rule or any previous rule (or in any administrative policy, directive, ruling, notice, guideline, guidance, or writing) directly relating to Title VI compliance is intended to create any legal or procedural rights enforceable against the United States.

H. Regulatory Flexibility Act

This rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, 604, because, for the reasons described above, no notice of proposed rulemaking is required under 5 U.S.C. 553. *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 conforms the Department's regulations to the Equal Protection Clause standards and harmonizes the scope of its regulations for consistency with Title VI, which does not prohibit conduct having an unintentional disparate impact. All Federal funding recipients will remain subject to the longstanding Title VI obligation to not discriminate intentionally on the basis of race, color, or national origin.

I. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501 *et seq.,* requires agencies to prepare several analytic statements before proposing any rule that may result in annual expenditures of $100 million by state, local, or tribal governments, or the private sector. 2 U.S.C. 1532(a). The UMRA also, however, excludes from its 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.'' 2 U.S.C. 1503(2). Accordingly, this rulemaking is not subject to the provisions of the UMRA.

J. Congressional Review Act

The Office of Information and Regulatory Affairs has found that this rule is not a ''major rule'' as defined by the Congressional Review Act, 5 U.S.C. 804(2).

K. Paperwork Reduction Act of 1995

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 for 45 CFR Part 80

Administrative practice and procedure, Civil rights, Discrimination, Grant programs.

Accordingly, for the reasons set forth above, the Department of Health and Human Services amends part 80 of title 45 of the Code of Federal Regulations as follows:

PART 80—NONDISCRIMINATION UNDER PROGRAMS RECEIVING FEDERAL ASSISTANCE THROUGH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

■ 1. The authority citation for part 80 is revised to read as follows:

Authority: 42 U.S.C. 2000d, 2000d–1.

■ 2. Amend § 80.3 as follows:
■ a. Remove and reserve paragraph (b)(2);
■ b. Revise paragraph (b)(3);
■ c. Remove and reserve paragraphs (b)(6) and (c)(3); and
■ d. Remove the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 80.3 Discrimination prohibited.

* * * * *

(b) * * *

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this part applies, on the ground 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.

* * * * *

■ 3. Amend § 80.5 as follows:
■ a. Remove and reserve paragraph (g);
■ b. Revise paragraph (h);
■ c. Remove and reserve paragraphs (i) and (j); and
■ d. Remove the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 80.5 Illustrative application.

* * * * *

(h) A recipient may not take action that is calculated to bring about indirectly what this regulation forbids it to accomplish directly.

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Robert F. Kennedy, Jr.,
Secretary, Department of Health and Human Services.

[FR Doc. 2026–15000 Filed 7–23–26; 8:45 am]
BILLING CODE 4153–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 260305–0067; RTID 0648–XF798]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the West Yakutat District of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2026 total allowable catch (TAC) of Pacific ocean