of the rule. One comment opposed the proposal, expressing dissatisfaction that almond handlers pay almond growers for the edible portion of almonds received and do not pay growers for the inedible portion of the almonds. The comment suggested that handlers should pay growers for both the edible and inedible portion of almonds received; however, the basis of this comment relates to business decisions and interactions between almond growers and handlers outside of the scope of this action. Accordingly, AMS made no changes to the rule as proposed.

After consideration of all relevant material presented, including the information and recommendations submitted by the Board and other available information, AMS has determined that this final rule is consistent with and effectuates the purposes of the Act.

List of Subjects in 7 CFR Part 981

Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 981 as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

■ 1. The authority citation for part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 981.442 [Amended]

■ 2. Amend § 981.442(a)(5) by removing the word ‘‘September’’ and adding in its place the word ‘‘November’’.

Erin Morris,

Administrator, Agricultural Marketing Service.

[FR Doc. 2026–19887 Filed 9–28–26; 8:45 am]

BILLING CODE 3410–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 112

RIN 3245–AI72

Removing Constitutional Concerns From SBA Programs

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is publishing this final rule to remove certain unnecessary and potentially unlawful regulatory provisions requiring affirmative action by SBA program applicants or recipients, and to revise a regulatory provision to make technical corrections.

DATES: The final rule is effective on September 29, 2026.

FOR FURTHER INFORMATION CONTACT: Paul Fitzpatrick, Associate Administrator, Office of Entrepreneurial Development, *Paul.Fitzpatrick@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

SBA is removing and revising certain provisions from its regulations codified in 13 CFR part 112 (‘‘Nondiscrimination in Federally Assisted Programs of SBA—Effectuation of Title VI of the Civil Rights Act of 1964’’) to more closely align its regulations with the language that Congress enacted in Title VI prohibiting intentionally discriminatory conduct, *see* 42 U.S.C. 2000d. On December 10, 2025, the Department of Justice (DOJ) issued revisions to its Title VI regulations. 90 FR 57141. SBA agrees with the rationale provided in that rule and issues its own rule to address similar issues within SBA’s Title VI regulations.

As noted in DOJ’s rule, there are serious statutory and constitutional concerns with the legality of provisions in SBA’s Title VI regulations that go beyond intentional discrimination by prohibiting conduct that has an unintentional disparate impact and that encourage, and sometimes mandate, the use of race without requiring that use be narrowly tailored to remedy the effects of specifically identified past discrimination. This rule accordingly rescinds those portions of the regulations, which are in considerable tension with both the statute and the Constitution and do not sufficiently serve the public interest.

First, this rule rescinds the full text of 13 CFR 112.3(b)(3), which authorizes and, in some instances, requires affirmative action based on race, color, or national origin. Second, this rule makes a technical correction to the first sentence of 13 CFR 112.4 and rescinds the third sentence of that section, the latter of which addresses employment practices of Federal funding recipients. Third, this rule rescinds the full text of 13 CFR 112.7(a), which provides an illustrative example of applying the regulations to employment practices previously covered under the third sentence of 13 CFR 112.4. Fourth, this rule rescinds the full text of 13 CFR 112.7(d), which provides illustrative examples of the affirmative action authorized or required under 13 CFR 112.3(b)(3).

The rule’s revisions also conform to Executive Order 14281, *Restoring Equality of Opportunity and Meritocracy,* 90 FR 17537 (Apr. 23, 2025). That Order stated 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. Though SBA would take this action independent of Executive Order 14281, the Order supports this action.

The practical impact of this rule’s modifications will be to make clear to SBA Federal funding recipients that the SBA Title VI regulations do not prohibit conduct or activities that have a disparate impact. Instead, they prohibit only intentional discrimination, and SBA 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, specifically 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 provide any Federal department or agency with authority to prohibit unintentional disparate impact. And despite ample opportunities, Congress has enacted no subsequent amendments to Title VI to impose disparate-impact liability.

B. Relevant Supreme Court Decisions

The Supreme Court has concluded 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 concluded 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 requires proof of 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. 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. Though 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.* Although the Supreme Court in *Sandoval* ''assume[d],'' without deciding, that DOJ's disparate-impact regulations were valid, the Court explained that the regulations are in ''considerable tension'' with the Supreme Court's Title VI precedents. Similarly, the regulations do 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.'').

In 2023, the Court emphasized that ''the equal protection clause requires equality of treatment before the law for all persons without regard to race or color.'' *SFFA,* 600 U.S. at 205 (cleaned up). In reviewing the admissions policies of certain higher education institutions, the Court explained that the Constitution requires ''eliminating all'' racial discrimination. *Id.* at 206. To that end, it held that ''[a]ny exception to the Constitution's demand for equal protection must survive a daunting two-step examination known in our cases as 'strict scrutiny,''' which requires that racial classifications '''further compelling government interests''' and be '''narrowly tailored'—meaning 'necessary'—to achieve [such] interest[s].'' *Id.* at 206–07. Moreover, the Court explained that its ''precedents have identified only two compelling interests that permit resort to race-based government action,'' only one of which is relevant in general government administration: ''remediating specific, identified instances of past discrimination that violated the Constitution or a statute.'' *Id.* at 207.

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 when there is no discriminatory intent. *Sandoval,* 532 U.S. at 280, 286 n.6.

C. 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.*

The 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 disparate-impact liability's 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.* The Order directed the Attorney General to, among other things, review Title VI regulations and ''initiate appropriate action to repeal or amend'' them ''to the extent they contemplate disparate-impact liability.'' *Id.* at 17538.

Section 3 of the Order also specifically revoked prior Presidential approvals of the disparate-impact regulations promulgated under Title VI. *Id.* Section 5 of the Order 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.* Accordingly, this rule revises SBA's currently existing Title VI regulations to effectuate the Order's policy and purpose.

In any event, SBA 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, SBA would have taken steps to adopt the policy to eliminate the use of disparate-impact liability under Title VI. The Order states, and SBA 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 single, best 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, SBA concludes that these reasons together support eliminating disparate-impact liability from SBA's Title VI regulations. In any event, SBA concludes that each reason is a separate and independent basis for eliminating disparate-impact liability from SBA's Title VI regulations.

D. Need for Rulemaking

SBA's regulation at 13 CFR 112.3, entitled ''Discrimination prohibited,'' contains a provision at section 112.3(b)(3) that encourages and even requires unlawful discrimination in the form of affirmative action, permitting the ''consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments'' that have limited participation in federally funded programs by individuals of racial groups. *Id.* 112.3(b)(3). But the provision does not expressly specify that the funding recipient must narrowly tailor such race-based considerations to serve a compelling governmental interest, as is required to satisfy strict scrutiny. *See id.* Section 112.4 addresses prohibited discriminatory employment practices and extends beyond intentional discrimination to prohibiting conduct that ''tends'' to have a discriminatory effect. *Id.* 112.4. In addition, section 112.4 requires a technical correction because it references an incorrect subsection in section 112.2. Section 112.7(a) provides an illustration of prohibited employment practices without limiting that application to employment practices where the primary purpose of the financial assistance is for employment, as required by 42 U.S.C. 2000d–3. *Id.* 112.7(a). Finally, section 112.7(d) provides an illustration of the application of affirmative action requirements set forth in section 112.3(b)(3), which this rule rescinds. *Id.* 112.7(d).

There are serious statutory and constitutional concerns with the legality of SBA's Title VI disparate-impact regulations. SBA also has serious policy concerns with its current disparate-impact regulations because they create confusion, undermine public confidence in the nation's civil rights laws and the rule of law, and produce burdensome litigation and compliance costs.

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. *Loper Bright,* 603 U.S. at 400. As summarized above, *Sandoval* calls into serious doubt the legality of SBA's ''disparate-impact regulations.'' 532 U.S. at 281–82, 284–85 (noting that DOJ's regulations, which SBA's regulations mirror, are 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 SBA cannot extend Title VI beyond its single, best meaning. *See* 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, SBA 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 range of conduct than the statute itself. This range 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 SBA'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 SBA'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.* This serious constitutional concern further confirms that the best reading of Title VI is that it prohibits only intentional discrimination and does not authorize SBA 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 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))). 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. Importantly, SBA's affirmative action provision authorizes and sometimes requires the intentional use of race without requiring that this use be narrowly tailored to serve a recognized compelling interest. Instead, it encourages intentional racial balancing ''to overcome the consequences of'' unintended racial disparities. 13 CFR 112.3(b)(3).

As summarized above, there are serious statutory and constitutional concerns with SBA's disparate-impact regulations. But even if the regulations were legal, SBA 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, SBA 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

SBA also has serious policy concerns with the Title VI regulations' imposition of disparate-impact liability. Although SBA 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. As noted in section 1 of the Order, ''[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. 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. 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 Title VI forbids intentional racial discrimination. This tension tends to create confusion, undermine public confidence in the nation's civil rights laws, and undermine public confidence 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'' at issue were ''themselves imprecise in many ways'' and ''the use of these opaque racial categories undermine[d], instead of promote[d], [their] goals''). This lack of clarity undermines the law's ability to encourage nondiscrimination and is evident in, among other things, many of the notices of funding opportunities (NOFOs) that SBA published in past years. Many of the NOFOs explicitly targeted certain racial groups. For instance, the Fiscal Year 2021 NOFO for the Community Navigator Pilot Program required grantees to submit performance reports to SBA throughout the performance period. The NOFO stated that SBA sought to measure the outputs and outcomes of the grant through metric crosscuts including race. SBA believes that repealing certain parts of its regulation would reduce the need for such race-based measurements—thereby removing the incentive for covered entities to engage in racial balancing—and maintain clarity and public confidence in the nation's civil rights laws.

SBA 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 any alleged benefits are outweighed by the other issues and factors SBA has considered. And in any event, the concern is mitigated by the fact that eliminating disparate-impact liability does not preclude the use of data on disparate outcomes to help prove intentional discrimination. Both SBA and private litigants 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 such disparity to impose liability for an unintentional disparate impact.

SBA has also considered the alternative of trying to adopt a modified version of disparate-impact liability, for example, by requiring covered entities to remedy unintentional discrimination for only certain types of cases involving specific protected classes, or where unintentional discrimination is tied to specific categories of activity with quantifiable disparate impacts. But any version of disparate-impact liability is inconsistent with Title VI's single, best meaning. Regardless, SBA has determined that any benefits from a regulation adopting alternative versions of disparate-impact liability are outweighed by SBA's legal and policy concerns. 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. SBA believes that the better course is to avoid the complexities, costs, and litigation associated with this alternative, even if eliminating disparate-impact liability ultimately would leave some problems unaddressed and others inadequately addressed.

SBA has additionally considered the potential reliance interests of funding recipients and others in the disparate-impact regulations. The *Sandoval* decision, however, cast serious doubt on the continuing viability of the regulations more than 25 years ago. Executive Order 14281 also directed all agencies to ''deprioritize enforcement of all statutes and regulations to the extent they include disparate-impact liability.'' 90 FR at 17538. SBA accordingly believes that any reliance interests are minimal. Further, each of SBA's concerns, whether considered cumulatively or separately, outweighs any reliance interests.

SBA 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 SBA has continued 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, SBA finds that, regardless of the legality of SBA'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 that the Supreme Court questioned in *Sandoval* and the other legal and policy concerns discussed above; harmonize the implementing regulations' scope with the conduct that Congress intended Title VI to prohibit; promote consistent enforcement of Title VI 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 below, SBA amends the following provisions in its Title VI implementing regulation that explain particular types of discrimination prohibited, located at 13 CFR 112.3, 112.4, and 112.7.

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 right column is removed/revised:

Section	Remove/Revise
112.3(b)(3)	Full text of paragraph (3) is removed.
112.4	Text of first sentence is revised as follows, ''Small business concerns and development companies which apply for or receive any financial assistance of the kind described in § 112.2(b)(1) and (2), including concerns which are identifiable beneficiaries of loans made under § 112.2(b)(2), may not discriminate on the grounds of race, color, or national origin in their employment practices.''
	Full text of third sentence is removed, ''Where a primary objective of the Federal financial assistance is not to provide employment, . . . and nondiscriminatory treatment.''
112.7(a)	Full text of paragraph (a) is removed.
112.7(b)	Paragraph (b) is redesignated as paragraph (a).
112.7(c)	Paragraph (c) is redesignated as paragraph (b).
112.7(d)	Full text of paragraph (d) is removed.

B. Section-by-Section Analysis

Section 112.3(b)(3) and Section 112.7(d)

Sections 112.3(b)(3) and 112.7(d) deal with affirmative action. The first sentence of section 112.3(b)(3) authorizes a funding recipient to engage in affirmative action, even in the absence of a finding of prior discrimination in a program, ''to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, a program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin.'' This provision points not to intentional discrimination, but rather to the unintentional ''consequences of practices or impediments.'' Likewise, section 112.7(d)(2) authorizes giving ''special consideration to race, color, or national origin'' ''[e]ven though an applicant or recipient has never used discriminatory policies.'' Both provisions consequently encourage intentional racial classifications, racial preferences, and other race-based actions without specifying the compelling governmental interest and narrow tailoring that the Equal Protection Clause demands. These sections have long been unlawful under an Equal Protection Clause analysis.

The second sentence of 13 CFR 112.3(b)(3) imposes ''an obligation'' upon the recipient ''to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage'' ''[w]here previous discriminatory practice or usage tends, on the grounds 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 or activity to which this regulation applies.'' Likewise, section 112.7(d)(1) requires recipients ''to take additional steps to make equal opportunity fully available to racial and nationality groups previously subjected to discrimination'' ''[i]n some situations even though past discriminatory practices have been abandoned.'' These provisions go beyond the Equal Protection Clause, which, in limited circumstances 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, these provisions do not expressly require narrow tailoring to counter particular past discrimination. The provisions accordingly promote potentially illegal race, color, and national-origin discrimination. Moreover, in some instances, they may even coerce recipients to consider and use race preferences when the recipient does not want to. This is contrary to the SBA's goal of promoting and defending a culture of nondiscrimination and is destructive to the public's understanding of and faith in the nation's civil rights laws. This rule, therefore, removes sections 112.3(b)(3) and 112.7(d).

Section 112.4 and 112.7(a)

Sections 112.4 and 112.7(a) address prohibited discriminatory employment practices. The first two sentences of section 112.4 prohibit intentionally discriminatory employment practices in a program when a primary objective of the Federal financial assistance that program receives is to provide employment. The first sentence of section 112.4 requires a technical correction because it incorrectly refers to subsection 112.2(a), which does not describe any kind of financial assistance as section 112.4 suggests. The correct reference is to subsection 112.2(b). For this reason, that sentence will be revised to read ''Small business concerns and development companies which apply for or receive any financial assistance of the kind described in § 112.2(b)(1) and (2), including concerns which are identifiable beneficiaries of loans made under § 112.2(b)(2), may not discriminate on the grounds of race, color, or national origin in their employment practices.''

The third sentence of section 112.4 extends the prohibition on discrimination to employment practices of funding recipients even ''[w]here a primary objective of the Federal financial assistance is not to provide employment'' if discrimination in the nonfunded employment practices ''tends, on the grounds 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 . . . to the extent necessary to assure equality of opportunity and nondiscriminatory treatment.'' This paragraph does not prohibit only intentional discrimination but rather extends the prohibition to conduct that ''tends'' to have a discriminatory effect.

Moreover, SBA notes that the regulation's application 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 same issue arises in section 112.7(a), which applies Title VI to employment practices, ''including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion, or transfer,'' without any limitation to employment practices where the primary purpose of the Federal financial assistance is employment.

For these reasons, the rule deletes the third sentence of section 112.4 and the entire paragraph in section 112.7(a) to amend the regulation so that it more closely adheres to the scope of conduct Congress prohibited under Title VI and to address the legal and policy considerations and determinations described in this document. Further, since SBA is removing paragraph (a) of section 112.7, SBA is redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

IV. Severability

SBA's position is that each of the amendments made by this rule serves a vital, related, but distinct purpose. SBA 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. SBA would adopt any of the amendments independent and regardless of the invalidity of any separate amendment.

V. Administrative Procedure Act

SBA issues this final rule without prior public notice and comment or a delayed effective date pursuant to the exception in the Administrative Procedure Act (APA) for rules ''relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.'' 5 U.S.C. 553(a)(2).

Title VI concerns nondiscrimination 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.'' 13 CFR 112.2(b); *see also* 13 CFR 112.8 (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 (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 a 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 a Department of Transportation regulation regarding the 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).

Invoking 5 U.S.C. 553(a)(2) is consistent with the definition for Federal financial assistance provided by the U.S. Office for Management and Budget (OMB) in 2 CFR 200.1, which defines Federal financial assistance with the same categories as the APA'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 SBA, all the forms of Federal financial assistance set forth under 2 CFR 200.1 that SBA administers would fall under the ''public property, loans, grants, benefits, or contracts'' exception. Thus, SBA issues this final rule without prior public notice and comment or a delayed effective date under 5 U.S.C. 553(a)(2).

VI. Regulatory Certifications

A. Executive Orders 12866 and 13563

Executive Orders (EOs) 12866, *Regulatory Planning and Review,* 58 FR 51735 (Oct. 4, 1993), and 13563, *Improving Regulation and Regulatory Review,* 76 FR 3821 (Jan. 21, 2011), direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. OMB has determined that this rule will be a significant regulatory action and, therefore, is subject to review under section 6(b) of E.O. 12866, though it is not significant under section 3(f)(1) of that order. Accordingly, this rule has been submitted to OMB for review.

Cost-Benefit Analysis

Need for Regulatory Action: SBA is removing four regulatory provisions from 13 CFR part 112 that either raise serious constitutional difficulties under existing equal protection jurisprudence or cannot be reconciled with the best reading of the underlying statutory authority. SBA has determined that retaining them in the CFR would be contrary to constitutional and statutory authority and contrary to the public interest.

Baseline: The baseline for this analysis is the regulatory and practical environment that would exist absent this action. The provisions being removed have been cited extremely infrequently in any agency action regarding an applicant for or recipient of SBA funding. They do not reflect current SBA enforcement practice, and any attempt to enforce them in the manner their text might suggest would be constitutionally infirm under existing Supreme Court precedent. Accordingly, the baseline is a world in which these provisions are already effectively inoperative: they impose no meaningful compliance obligations that are being followed, they are not enforced by SBA, and they generate no material regulatory behavior by program participants.

Incremental Effects: Costs. Because the removed provisions are not currently enforced and any compliance activity or reliance by applicants and recipients is minimal, removing and revising them should not impose new costs on any party. There are no new compliance requirements, reporting obligations, or operational changes required of small businesses, financial assistance applicants, recipients, States, local governments, or other regulated entities. SBA does not anticipate any transition costs or administrative costs associated with implementation of this rule. Accordingly, the estimated annualized compliance costs of this rule are negligible.

Incremental Effects: Benefits. The primary benefits of this rule are qualitative. By removing constitutionally suspect provisions from the CFR, SBA:

(1) Eliminates regulatory text that could mislead applicants and recipients into believing they are authorized or required to engage in racial classifications that are unconstitutional under existing law, thereby reducing litigation risk and legal uncertainty.

(2) Improves the clarity and internal consistency of the CFR, consistent with the goals of E.O. 13563, which directs agencies to identify and revise regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.''

(3) Reduces the administrative burden on SBA and program participants of maintaining, interpreting, and applying provisions that have no operative legal effect.

Because the removed provisions are not currently enforced and impose no compliance obligations that regulated entities are actually meeting, this rule does not eliminate any social benefits that the existing regulatory provisions are generating. This rule has no monetized benefits.

B. Executive Order 14192

E.O. 14192, *Unleashing Prosperity Through Deregulation,* 90 FR 9065 (Jan. 31, 2025), requires an agency, unless prohibited by law, to identify at least 10 existing regulations to be repealed when the agency publicly promulgates a new regulation. 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.'' *Id.* By revising SBA'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, this rule eliminates unnecessary regulation. *See supra* Part VI.A (conducting cost-benefit analysis).

Accordingly, SBA expects this rule to be a deregulatory action under E.O. 14192.

C. Executive Order 12988

This action meets the standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988, *Civil Justice Reform,* 61 FR 4729 (Feb. 7, 1996). SBA has taken the necessary steps to minimize litigation, eliminate drafting errors and ambiguity, reduce burden, and provide a clear legal standard for affected conduct, and has ''specifie[d] in clear language the preemptive effect . . . to be given to the law.'' *Id.* at 4731.

D. Executive Order 13132

This final rule does not have federalism implications as defined in E.O. 13132, *Federalism,* 64 FR 43255 (Aug. 10, 1999). It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Order. As such it does not warrant the preparation of a Federalism Assessment. Additionally, the rule will not require new compliance activities or reporting by State, local, or tribal governments.

E. Executive Order 12250

Pursuant to E.O. 12250, *Leadership and Coordination of Nondiscrimination Laws,* 45 FR 72995 (Nov. 4, 1980), 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.'' DOJ has reviewed and approved this rule.

E. Paperwork Reduction Act, 44 U.S.C. 3501–3520

Pursuant to the Paperwork Reduction Act, agencies must consider whether a rule will create additional burdens related to recordkeeping, paperwork, or information collection. SBA has determined that this final rule does not affect any existing collection of information and does not create any new collection of information triggering the requirements of the Act.

F. Regulatory Flexibility Act, 5. U.S.C. 601–612

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires agencies to consider the effect of their actions on small entities, small nonprofit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis that describes the impact of the rule on small entities. However, the RFA requires such analysis only where notice and comment rulemaking is required. As discussed above, notice and comment are not required for this rule. Accordingly, SBA is not required to conduct a regulatory flexibility analysis.

G. Congressional Review Act, 5 U.S.C. 801–808

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act, 5 U.S.C. 801 *et seq.,* provides that, before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. SBA will submit a report containing this rulemaking and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. The Office of Information of Regulatory Affairs has reviewed this rulemaking and found that it does not meet the criteria set forth in 5 U.S.C. 804(2).

List of Subjects in 13 CFR Part 112

Civil rights, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA amends 13 CFR part 112 as follows:

PART 112—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES OF SBA—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

■ 1. The authority citation for part 112 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252 (42 U.S.C. 2000d–1).

§ 112.3 [Amended]

■ 2. Amend § 112.3 by removing paragraph (b)(3).

■ 3. Revise § 112.4 to read as follows:

§ 112.4 Discrimination in employment.

Small business concerns and development companies which apply for or receive any financial assistance of the kind described in § 112.2(b)(1) and (2), including concerns which are identifiable beneficiaries of loans made under § 112.2(b)(2), may not discriminate on the grounds of race, color, or national origin in their employment practices. Such assistance is deemed to have as a primary objective the providing of employment.

§ 112.7 [Amended]

■ 4. Amend § 112.7 by removing paragraphs (a) and (d) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

Kelly Loeffler,

Administrator.

[FR Doc. 2026–19878 Filed 9–28–26; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2026–11785; Project Identifier AD–2026–00916–T; Amendment 39–23475; AD 2026–20–02]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 787–8 and 787–9 airplanes. This AD was prompted by a report of the lack of data to substantiate engine operability when an airplane is dispatched under a certain master minimum equipment list (MMEL) item. This AD prohibits dispatching an airplane under the operational procedures of the operator's minimum equipment list item corresponding to a certain MMEL item. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 14, 2026. The FAA must receive comments on this AD by November 13, 2026

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2026–11785; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Shaan Brar, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3558; email: *shaan.s.brar@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments using a method listed under the **ADDRESSES** section. Include Docket No. FAA–2026–11785 and Project Identifier AD–2026–00916–T at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Shaan Brar, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3558; email: *shaan.s.brar@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA received a report from Rolls-Royce Deutschland Ltd & Co KG of the lack of data to substantiate engine operability, including compressor stability, relight capability, surge recovery, and inclement weather capability, when Model 787–8 and 787–9 airplanes equipped with certain Rolls-Royce Deutschland Ltd & Co KG engines are dispatched under MMEL item 75–33–01. MMEL item 75–33–01 (''Engine Intermediate Pressure (IP) Bleed Valves (RR)'') allows an aircraft to be dispatched for three days with one intermediate pressure bleed valve (IPBV) inoperative on each engine, provided appropriate performance adjustments are applied. The FAA is issuing this AD to address the risk of MMEL dispatch with an inoperative engine IPBV on one or both engines. This condition, if not addressed, could result in loss of engine thrust control and consequent loss of control of the airplane.

FAA's Determination

The FAA is issuing this AD because the agency has determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD prohibits dispatching an airplane under the operational procedures of the operator's minimum equipment list item corresponding to MMEL item 75–33–01.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.