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DEPARTMENT OF TRANSPORTATION

49 CFR Part 21

RIN 2105–AF45

Rescinding Portions of Department of Transportation's Title VI Regulations to Conform More Closely with the Statutory Text and to Implement Executive Order 14281

AGENCY: Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT or Department).

ACTION: Final rule.

SUMMARY: By this rule, the U.S. Department of Transportation amends its regulations implementing Title VI of the Civil Rights Act of 1964 ("Title VI") to eliminate disparate-impact liability. These amendments align the Department's regulations with Title VI's original public meaning, avoid constitutional concerns, reduce compliance costs, and serve the public interest. In addition, these revisions implement changes directed in Executive Order 14281. These revisions also align with changes made by the U.S. Department of Justice (DOJ) to its Title VI Regulations at 28 CFR part 42, effective December 10, 2025.

DATES: The rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Sean Clayton, Acting Director, Office of Civil Rights, at 202-366-7632.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Department is rescinding portions of its Title VI implementing regulations to align with the language that Congress enacted in Title VI prohibiting intentionally discriminatory conduct, pursuant to Title VI, 42 U.S.C. 2000d-1. *See* 42 U.S.C. 2000d. There are serious statutory and constitutional concerns with the legality of the Department's Title VI regulations, which go beyond intentional discrimination by prohibiting conduct that has an unintentional disparate impact. This rule accordingly rescinds those portions of the regulations that prohibit conduct having a disparate impact, which are in considerable tension with both the statute and the Constitution and do not serve the public interest. First, this rule rescinds the full text of 49 CFR 21.5(b)(2), which prohibits the use of "criteria or methods of administration which have the effect of subjecting persons 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 with respect to individuals of a particular race, color, or national origin." Second, this rule removes the two uses of the phrase "or effect" from 49 CFR 21.5(b)(3). Third, this rule rescinds the full text of 49 CFR 21.5(b)(7), which authorizes affirmative action even in the absence of a finding of prior discrimination in a program or activity "to assure that no person is excluded from participation in or denied the benefits of the program or activity." Fourth, this rule removes one sentence regarding affirmative action from 49 CFR 21.5(c)(1) and rescinds the full text of 49 CFR 21.5(c)(3), which addresses employment practices subject to Federal financial assistance. Fifth, this rule removes the phrases "or its effect when made" and "or its effect when made will" from 49 CFR 21.5(d).

The rule's revisions also conform to Executive Order 14281, *Restoring Equality of Opportunity and Meritocracy*, 90 FR 17537 (Apr. 23, 2025). That Order states that

"[i]t is the policy of the United States to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, Federal civil rights laws, and basic American ideals." *Id.* at 17537. Although the Department, in consultation with the Department of Justice (DOJ), would take this action independently of Executive Order 14281, Executive Order 14281 supports this action.

This rule makes clear that the Department's Title VI regulations prohibit only intentional discrimination, not conduct or activities that have a disparate impact. The Department thus will not take action under Title VI premised on disparate-impact liability.

II. Discussion

A. Statutory History of Title VI

Title VI of the Civil Rights Act of 1964, as amended, provides: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. 2000d. Title VI also directs Federal departments and agencies that extend Federal financial assistance to "effectuate the provisions of" Title VI "by issuing rules, regulations, or orders of general applicability." 42 U.S.C. 2000d-1. The section of Title VI that sets forth the prohibited conduct, 42 U.S.C. 2000d, prohibits intentional discrimination and makes no reference to unintentional disparate effects or impact. *See Alexander v. Sandoval*, 532 U.S. 275, 280 (2001) ("[I]t is . . . beyond dispute—and no party disagrees—that § 601 [of Title VI] prohibits only intentional discrimination."). The statute does not explicitly provide any Federal department or agency with authority to prohibit conduct having an unintentional disparate impact. And despite having ample opportunities, Congress has enacted no subsequent amendments to Title VI to impose disparate-impact liability.

B. Regulatory History of Title VI

Pursuant to Executive Order 12250, "[t]he Attorney General . . . coordinates the implementation and enforcement by Executive agencies of . . . Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*)." 45 FR 72995, 72995 (Nov. 2, 1980). Accordingly, DOJ is primarily responsible for defining the nature and scope of Title VI's prohibition of discrimination on the basis of race, color, and national origin in programs or activities receiving Federal financial assistance. Executive Order 12250 directs DOJ, among other things, to "develop standards and procedures for taking enforcement actions and for conducting investigations and compliance reviews." *Id.* Further, as part of this responsibility, Executive Order 12250 provides that other agencies' regulations implementing Title VI are subject to the Attorney General's approval. *Id.* at 72996.

DOJ's Title VI regulations are codified at 28 CFR 42.101, 42.112. The then-Department of Health, Education, and Welfare issued the initial set of model regulations for Title VI on December 4, 1964, which included only one reference to 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)). DOJ adopted these model regulations in 1966, which likewise contained a single instance 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) (adding the "or effect" language to an additional provision), 28 CFR 42.104(b)(6) (introducing the "affirmative action" language to the regulations), and 28 CFR 42.104(c)(2) (extending the rule to Federal financial assistance whose primary objective is not to provide employment). *Id.* at 17955. In 2003, the Department 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); Pub. L. No. 100-259, sec. 6, 102 Stat. 28, 31 (1988). Prior to its recent

amendment, *see* 90 FR 57141 (Dec. 10, 2025), DOJ's regulation describing the scope of prohibited discriminatory conduct, 28 CFR 42.104, included prohibitions on conduct that had an unintentional disparate impact, discussed more fully below.

DOT's initial Title VI regulations at 49 CFR part 21 followed DOJ's model, taking effect on June 18, 1970. 35 FR 10080 (June 18, 1970). The initial regulations included the "or effect" language that exists in the current regulation. *Id.* In 1973, DOT amended its regulation to incorporate affirmative-action liability into 49 CFR 21.5(b)(7). 38 FR 17997 (July 5, 1973). In 2003, DOT added language regarding "program or activity" to reflect the amendment of Title VI by the Civil Rights Restoration Act of 1987 and further revised the affirmative action provision in 49 CFR 21.5(b)(7).

C. Relevant Supreme Court Decisions

The Supreme Court has held that Title VI 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, five years after the Department last substantively amended its Title VI regulations, 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) (Powell, J., announcing the judgment of the Court); *id*. at 325, 328, 352–53 (Brennan, White, Marshall, and Blackmun, JJ., concurring in part and dissenting in part); *see also Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 198 n.2 (2023) ("*SFFA*"). Shortly before *Bakke*'s Title VI holding, the Supreme Court held that the Equal Protection Clause prohibits only intentional discrimination and that "a law or other official act" that has a "racially disproportionate impact" alone does not violate that Clause. *Washington v. Davis*, 426 U.S. 229, 239 (1976); *see also Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977) ("Proof of racially discriminatory intent or purpose is

required to show a violation of the Equal Protection Clause.”). Taken together, these Supreme Court cases establish that Title VI’s statutory prohibition, like the Equal Protection Clause, extends only to intentional discrimination.

In 2001, the Supreme Court, in *Alexander v. Sandoval*, reaffirmed that settled understanding. 532 U.S. at 280 (“[I]t is . . . beyond dispute . . . that § 601 [of Title VI] prohibits only intentional discrimination.”). In *Sandoval*, the Supreme Court held that private plaintiffs lacked a private right of action to enforce DOJ’s “disparate-impact regulations.” *Id.* at 285–87. Although the Supreme Court had previously found a private cause of action to enforce Title VI’s bar on intentional discrimination, *id.* at 279–80, that conclusion did not extend to enforcing DOJ’s “disparate-impact regulations.” *Id.* at 285. As the Supreme Court explained, it is “clear” that “the disparate-impact regulations do not simply apply” the statutory prohibition, as the regulations “forbid conduct that [Title VI] permits,” so it is equally “clear that the private right of action to enforce [Title VI] does not include a private right to enforce these regulations.” *Id.* While the Supreme Court in *Sandoval* “assume[d],” without deciding, that DOJ’s disparate-impact regulations were valid, the Court explained that the then-current version of the regulations were in “considerable tension” with the Supreme Court’s Title VI precedents. *Id.* at 282. Similarly, the regulations did not “authoritatively” construe Title VI because the regulations “forbid conduct”—namely, policies that unintentionally result in a disparate impact—that Title VI “permits.” *Id.* at 281–82, 284–85; *see also id.* at 286 n.6 (“[Title VI] permits the very behavior that the regulations forbid.”). The Court has not ruled specifically on DOT’s Title VI regulations.

Finally, in 2024, the Supreme Court overruled *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984). *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 409–12 (2024). In reaching that result, the Supreme Court made clear that “statutes . . . have a single, best meaning” that is “‘fixed at the time of enactment.’” *Id.* at 400

(quoting *Wis. Cent. Ltd. v. United States*, 585 U.S. 274, 284 (2018)). Thus, Title VI's bar on discrimination can have only one meaning. And under Supreme Court precedent, the single, best meaning of Title VI is that it "prohibits only intentional discrimination" and "permits" facially neutral policies that result in disparate outcomes so long as there is no discriminatory intent. *Sandoval*, 532 U.S. at 280, 286 n.6.

D. Executive Order 14281

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

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

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

In any event, DOT would have independently initiated steps toward making these changes regardless of Executive Order 14281. Even if Executive Order 14281 did not

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

Imposing disparate-impact liability endangers these policy objectives. Disparate-impact liability also raises serious constitutional concerns, is in considerable tension with the original public meaning of Title VI, creates confusion, increases the costs of compliance, and does not serve the public interest. In addition, DOT's Title VI regulations have always substantively mirrored DOJ's regulations, and DOJ's recent amendments to its Title VI regulations support these changes to the DOT regulations.

After considering the relevant issues and factors and weighing the relevant considerations, the Department concludes that these reasons support eliminating disparate-impact liability from the Department's Title VI regulations. In any event, the Department concludes that each reason is a separate and independent basis for eliminating disparate-impact liability from the Department's Title VI regulations.

E. Need for Rulemaking

The Department's regulation at 49 CFR 21.5, titled "Discrimination prohibited," contains several provisions that go beyond the statutory text and constitutional requirements by prohibiting facially neutral policies that have a disparate impact and in some instances encourage or even require unlawful discrimination labeled as "affirmative action." Section 21.5(b)(2) is the current regulation's general disparate-impact

prohibition, which states that a "recipient . . . may not . . . utilize criteria or methods of administration which have the effect of subjecting persons 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 with respect to individuals of a particular race, color, or national origin." 49 CFR 21.5(b)(2).

Beyond that general prohibition, section 21.5(b)(3) addresses a Federal funding recipient's selection of the site or location of facilities and includes two references to "effect" that extend the scope of prohibited conduct to include conduct with unintentional disparate impact. *Id.* 21.5(b)(3). Section 21.5(b)(7) 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." But this provision does not expressly specify that the funding recipient must narrowly tailor such use nor that this use must serve a compelling governmental interest, as is required to satisfy strict scrutiny. *Id.* 21.5(b)(7). Section 21.5(c)(1) includes additional language regarding affirmative action. *Id.* 21.5(c)(1). Section 21.5(c)(3) addresses prohibited discriminatory employment practices and extends beyond intentional discrimination by prohibiting conduct that "tends" to have a discriminatory effect. *Id.* 21.5(c)(3). Section 21.5(d) provides that funding recipients may not select a site or location for a facility if the purpose or effect of that selection is to discriminate on the grounds of race, color, or national origin. *Id.* 21.5(d).

There are serious statutory and constitutional concerns with the legality of the Department's Title VI disparate-impact regulations. The Department also has serious policy concerns with its current disparate-impact regulations 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 the Title VI statute 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. *Sandoval* calls into serious doubt the legality of DOJ's former "disparate-impact regulations." *Sandoval*, 532 U.S. at 281–82, 284–85 (noting that the DOJ regulations were in "considerable tension" with the Supreme Court's Title VI precedents); *see also id.* at 286 n.6 ("[Title VI] permits the very behavior that the regulations forbid.")

Although *Sandoval* resolved only the question of private enforceability, subsequent cases such as *Loper Bright* have made clear that agencies cannot extend Title VI beyond its original public meaning. *See* 603 U.S. at 412–13 (holding that "courts must . . . ensur[e] that [an] agency acts within" its statutory authority). The same goes for DOT's Title VI regulations. *Sandoval* and *Loper Bright* thus also call into question the legality of DOT's Title VI disparate-impact regulations, even though the Court has not ruled specifically on DOT's Title VI regulations. And even in the absence of Supreme Court precedent, the Department would have concluded that the best reading of Title VI is that it prohibits only intentional discrimination, not unintentional disparate outcomes.

Title VI authorizes agencies to promulgate regulations "to effectuate" the statute's prohibition of intentional discrimination. 42 U.S.C. 2000d-1. The current regulations' extension of prohibited conduct to include conduct with an unintentional disparate impact reaches a vastly broader scope than the statute itself. This scope is too broad to be considered a simple prophylactic measure aimed at preventing intentional discrimination. *See Sandoval*, 532 U.S. at 286 n.6 ("[Title VI] permits the very behavior that the

regulations forbid.”). Thus, the disparate-impact regulations do not “effectuate” Title VI. 42 U.S.C. 2000d-1.

There are also serious concerns about whether the Department’s Title VI regulations pass constitutional muster under the Equal Protection Clause. As the Supreme Court recently held in *SFFA*, “the Equal Protection Clause . . . applies without regard to any differences of race, of color, or of nationality—it is universal in its application” and the “guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color.” 600 U.S. at 206 (internal quotation marks omitted) (first quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886); and then quoting *Bakke*, 438 U.S. at 289–90 (Powell, J.)). Despite the promises of the Equal Protection Clause, a funding recipient’s risk of disparate-impact liability under DOT’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 consider race, color, and national origin proactively 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 disparate outcomes by treating certain racial groups differently from others—the exact conduct the Equal Protection Clause forbids. *See id*. The serious constitutional concerns raised by these perverse incentives further confirm that the best reading of Title VI is that it prohibits only intentional discrimination and does not authorize DOT to impose disparate-impact liability. *See Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988) (“[W]here an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to

the intent of Congress." (citing *NLRB v. Catholic Bishop of Chi.*, 440 U.S. 490, 499–501, 504 (1979))).

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

Similarly, the "affirmative action" 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, it encourages intentional racial balancing "to overcome the effects of" unintended racial disparities. 49 CFR 21.5(b)(7), (c)(1). Thus, for substantially the same reasons as above, the "affirmative action" provision raises serious constitutional concerns.

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

mismatch between the statute and the disparate-impact regulations would independently justify the repeal of the regulations.

2. Serious Policy Concerns

The Department also has serious policy concerns with the imposition of disparate-impact liability. While the Department expresses its policy concerns with disparate-impact liability independent of Executive Order 14281, that Order sets forth many valid policy concerns with disparate-impact liability. As noted in Section 1 of the Order,

> On a practical level, disparate impact liability has hindered businesses from making hiring and other employment decisions based on merit and skill, their needs, or the needs of their customers because of the specter that such a process might lead to disparate outcomes, and thus disparate impact lawsuits. Disparate impact liability 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 financial assistance 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, including DOT, have promulgated pursuant to Title VI. 532 U.S. at 280–82.

In addition, 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 and undermine public confidence in the Nation's civil rights laws and in the rule of law itself, as the law seems to both forbid and require the same conduct.

These problems are amplified by the arbitrary nature of the racial and ethnic categories typically used to measure disparate effects, which, by virtue of their arbitrariness, typically lack a meaningful connection to a compelling interest. *See, e.g.*,

SFFA, 600 U.S. at 216–17 (explaining that the "[racial] categories" utilized by Harvard and University of North Carolina were "themselves imprecise in many ways" and "the use of these opaque racial categories undermine[d], instead of promote[d], [their] goals"). The Department believes these policy concerns independently justify repealing certain parts of its regulation to cure this confusion, remove the incentive for covered entities 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 the other issues and factors the Department 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. Indeed, the current changes do not alter the Department's Title VI regulations insofar as they provide that "recipients should have available for the Secretary racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance." 49 CFR 21.9(b). Both the Department 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 it to impose liability for an unintentional disparate impact. This regulatory revision does not affect the Department's authority to collect and use such data to help prove intentional discrimination.

The Department has also considered the alternative of trying to adopt a modified version of disparate-impact liability, for example, by requiring covered entities to remedy unintentional discrimination for only certain types of cases in highways and transit. But

any version of imposing liability for unintentional discrimination is inconsistent with Title VI's original public meaning. 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 Department's legal and policy concerns. And even if possible, developing such a rule would not solve the confusion or rule-of-law concerns expressed above, nor reduce the compliance and litigation costs that covered entities face. The Department believes that the better course is to avoid the complexities, costs, and litigation associated with this alternative, even if eliminating disparate-impact liability would ultimately leave some problems unaddressed and others inadequately addressed.

The Department has also considered the potential reliance interests of financial-assistance recipients and others on the disparate-impact regulations. These interests may include personnel or contracting actions taken by DOT recipients that were taken, either in whole or in part, based on the need to assess and mitigate potential disparate impacts in their programs and projects. *Sandoval*, however, cast serious doubt on the continuing viability of the regulations more than 20 years ago. Executive Order 14281 directed all agencies to "deprioritize enforcement of all statutes and regulations to the extent they include disparate-impact liability." 90 FR at 17538. The Department accordingly believes that any reliance interests should be minimal and do not outweigh the Department's legal and other policy concerns. Further, each of the Department's concerns, whether considered cumulatively or separately, outweighs any reliance interests.

The Department notes that *Sandoval* has also led to a divergence between Title VI enforcement by private plaintiffs and enforcement by Federal departments and agencies. After *Sandoval*, private plaintiffs can enforce only Title VI's statutory prohibition on

intentional discrimination, while the Department of Justice, on behalf of Federal agencies, including DOT, could continue to pursue disparate-impact liability. Repealing the disparate-impact regulations eliminates this incongruent enforcement and restore public confidence in Title VI by aligning the Department's regulations with the Constitution.

Overall, after considering the relevant issues and factors and weighing the relevant considerations, the Department finds, regardless of the legality of the Department's disparate-impact regulations, that 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 among private plaintiffs and Federal departments and agencies, and provide much needed clarity to the courts and Federal financial assistance recipients and beneficiaries.

For the reasons summarized above, the Department amends the following provisions in its Title VI implementing regulation that explain the particular types of discrimination prohibited, located at 49 CFR 21.5.

A. Table Summarizing Amendments

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

SECTION	REMOVE	ADD
21.5(b)(2)	Full text of paragraph (2).	"[Reserved]"

21.5(b)(3)	“or effect” from both places.	
21.5(b)(7)	Full text of paragraph (7).	
21.5(c)(1)	“Such recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to their race, color, or national origin.”	
21.5(c)(3)	Full text of paragraph (3).	
21.5(d)	“or its effect when made” and “or its effect when made will”	

B. Section-by-Section Analysis

Section 21.5(b)(2)

Section 21.5(b)(2) is the current regulation’s general prohibition of conduct with unintentional disparate impact. It expands prohibited conduct from purposeful discrimination to impose liability on recipients of Federal funding and assistance who “utilize criteria or methods of administration which have the effect of subjecting persons to discrimination.” Because section 21.5(b)(2)’s only purpose is to extend the scope of Title VI to reach unintentional disparate-impact discrimination, this rule deletes this paragraph in its entirety. It thus amends the Department’s Title VI implementing regulations to conform to the scope of coverage Congress intended when it enacted Title VI and to address the legal and policy considerations and determinations described in this document. The rule replaces paragraph (b)(2) with a “Reserved” placeholder to maintain the numbering accuracy of previous citations and other references to parts of this section.

Section 21.5(b)(3)

Section 21.5(b)(3) addresses a recipient's or applicant's selection of the site or location of facilities. It provides that a recipient may not make selections with the "purpose or effect" of discriminating, or "with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of" Title VI or the Department's implementing regulations. The paragraph's two references to "effect" extend its scope to unintentional disparate impacts. This rule deletes both "or effect" references to conform paragraph (b)(3) to the scope of coverage Congress intended when it enacted Title VI and to address the legal and policy considerations and determinations described in this document.

Section 21.5(b)(7)

Section 21.5(b)(7) deals with "affirmative action." This section authorizes affirmative action even in the absence of a finding of prior discrimination in a program or activity "to assure that no person is excluded from participation in or denied the benefits of the program or activity." It consequently encourages intentional racial classifications, racial preferences, and other race-based actions that run counter to the principles of the Equal Protection Clause.

Additionally, paragraph (b)(7) requires that a recipient "take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage" when "prior 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." This provision goes beyond the Equal Protection Clause, which permits in limited circumstances, but does not mandate, a government to take narrowly tailored action to remedy the effects of its identified past discrimination. *See, e.g.*, *Bakke*, 438 U.S. at 307 (Powell, J.). Moreover, even putting aside the mandatory language, this provision does not expressly require narrow tailoring

to counter the 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 to consider and use race preferences when the recipient does not want to. This is detrimental to the Department'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 paragraph (b)(7) to address the legal and policy considerations and determinations described in this document.

Section 21.5(c)(1)

Section 21.5(c)(1) addresses prohibited discriminatory employment practices. Paragraph (c)(1) prohibits intentionally discriminatory employment practices in a program when a primary objective of the Federal funding or assistance that program receives is to provide employment. This paragraph also includes one sentence regarding "affirmative action" that recipients must take: "Such recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to their race, color, or national origin." While this use of "affirmative action" language may not raise the same legal concerns given its directive "without regard to their race, color, or national origin," this rule removes this sentence to avoid potential confusion, while the rest of the paragraph will remain, consistent with the DOJ regulation.

Section 21.5(c)(3)

Section 21.5(c)(3) extends the prohibition on discrimination to employment practices of the recipient even "where a primary objective of the Federal financial assistance is not to provide employment" if discrimination in the non-funded "employment practices of the recipient or other persons subject to the regulation 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." This paragraph does not prohibit only intentional discrimination but rather extends the prohibition to conduct that "tends" to have a discriminatory effect.

Moreover, the Department notes that paragraph (c)(3)'s extension to employment practices where the Federal funding's primary objective is not to provide employment explicitly 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) so that the regulation more closely adheres to Title VI, which addresses the legal and policy considerations and determinations described in this document.

IV. Severability

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

V. Regulatory Analyses and Notices

Administrative Procedure Act

The Department issues this final rule without prior public notice and comment or a delayed effective date pursuant to 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).

Title VI concerns non-discrimination conditions on the receipt of Federal financial assistance, and more particularly to the receipt of Federal "[g]rants and loans," "property," "personnel" and "[a]ny Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance." 49 CFR 21.23(c); *see also* 49 CFR 21.7 (requiring funding recipient sign contractual assurance of compliance with Title VI); *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 217–18 (2022) (observing that Congress enacted Title VI "[p]ursuant to its authority to 'fix the terms on which it shall disburse federal money'" (internal citation omitted)). *Cf. Education Programs or Activities Receiving or Benefitting from Federal Financial Assistance*, 82 FR 46655, 46655 (Oct. 6, 2017) (invoking the section 553(a)(2) exception to amend Title IX regulations to "promote consistency in the enforcement of Title IX for [the Department of Agriculture] financial assistance recipients"); *Preserving Community and Neighborhood Choice*, 85 FR 47899 (Aug. 7, 2020) (invoking the exception to repeal Housing and Urban Development rule regarding Federal grantees); *Participation by Minority Business Enterprise in Department of Transportation Programs*, 53 FR 18285 (May 23, 1988) (invoking the exception to expand coverage of Department of Transportation regulation regarding Federal Aviation Administration's airport financial assistance program); *Nondiscrimination on the Basis of Handicap in Federally Assisted Programs—Suspension of Guidelines with Respect to Mass Transportation*, 46 FR 40687 (Aug. 11, 1981) (invoking the exception to suspend Department of Justice guidelines regarding prohibiting disability discrimination in transportation programs and activities receiving Federal financial assistance).

Indeed, invoking 5 U.S.C. 553(a)(2) is consistent with the Office for Management and Budget's (OMB) definition for "Federal financial assistance" under 2 CFR 200.1, which defines "Federal financial assistance" with the same categories as the Administrative Procedure Act's exception for rules "relating to agency management or personnel or to public property, loans, grants, benefits, or contracts," 5 U.S.C. 553(a)(2). With potentially limited exceptions not applicable to the Department, all the forms of Federal financial assistance set forth under 2 CFR 200.1 that the Department administers would fall under the "public property, loans, grants, benefits, or contracts" exception. Thus, the Department issues this final rule without prior public notice and comment or a delayed effective date under 5 U.S.C. 553(a)(2).

Executive Orders 12866 and 13563 (Regulatory Review) and DOT Order 2100.6B

The Department has determined that this rulemaking is a "significant regulatory action" under Section 3(f) of Executive Order 12866, 58 FR 51735, 51738 (Sep. 30, 1993) and DOT Order 2100.6B (Mar. 10, 2025), [1] but it is not an "economically significant" action.

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

[1] Available at: https://www.transportation.gov/regulations/dot-order-21006b-policies-and-procedures-rulemakings.

As explained in the preamble, the regulatory modifications this rule makes are necessary to conform Department regulations to Executive Order 14281, address serious concerns regarding the Department's Title VI regulation that the Supreme Court raised in *Sandoval*, harmonize the implementing regulation with Title VI, promote consistency in enforcement among private plaintiffs and Federal departments and agencies, and provide much needed clarity to courts and the recipients and beneficiaries of Federal funding and assistance. Indeed, with respect to 49 CFR 21.5, the changes are clearly 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 regulation to existing statutory law, as interpreted by the U.S. Supreme Court.

Data limitations make the costs and benefits of the rule difficult to quantify. Title VI attaches to any recipient of Federal funds, and DOT awarded grants to approximately 3,600 recipients from fiscal year (FY) 2021 through 2025. During this time period, DOT announced approximately $466.7 billion in grants; of that total, approximately $118.0 billion was awarded as part of approximately 13,600 discretionary grants, and approximately $348.7 billion was awarded in formula grants. In FY2025 alone, DOT issued over 3,500 discretionary grant awards, to over 1,160 unique recipients, for total discretionary awards of approximately $22.5 billion. In FY2025, DOT also announced approximately $71.2 billion in formula grant awards.

Specific to its Title VI program, DOT opened approximately 330 Title VI complaints between 2021 and 2025. DOT does not have reliable tracking information regarding the number of compliance reviews related to Title VI or disparate-impact discrimination during the period of 2021 through 2025. The Department does not track which of its complaints involved allegations of disparate-impact discrimination, or which of its compliance reviews contained criteria related to disparate-impact discrimination. Consequently, the Department cannot reliably quantify the costs attributable to the

varying disparate-impact portions of complaint investigations, compliance reviews, or enforcement actions. Furthermore, that the existence of a disparate impact is sometimes a factor that may be considered in determining whether discrimination was intentional further impedes monetizing costs and benefits.

In addition, at least one DOT operating administration has regular Title VI program submission requirements for its recipients that are related to disparate impact. The Federal Transit Administration (FTA), in FTA Circular 4702.1B, requires that the following to be included in recipients' triennial Title VI Program submissions: facility siting equity analysis, system-wide service monitoring and service and fare equity analyses (for fixed-route transit providers), State investments analyses (for State departments of transportation), and metropolitan planning organization (MPO) investment analyses (for MPOs). FTA estimates the total annual burden of the Title VI program submission is 45 hours for each of the 100 larger transit entities, and with more specific Title VI program submission requirements, including the disparate impact–related submissions, the total is approximately 4,500 hours of work by recipient staff each year. However, FTA and DOT do not maintain data regarding the cost or burden for these specific disparate-impact-related requirements within the Title VI Program submissions.

Therefore, the overall cost effect on the Department is difficult to quantify. This deregulatory action should decrease the Department's enforcement costs as a result of fewer and less in-depth compliance reviews and complaint investigations. Although it is difficult to quantify, this deregulatory action will also have the benefit of bringing the Department's conduct in line with the law. The Department is also unable to quantify how funding recipients will respond to the regulatory changes. In addition, with the reduction of the Department's enforcement of Title VI as it applies to disparate-impact liability, the deregulatory action should result in lower compliance costs for recipients,

including shorter program submissions that no longer need to include items such as disparate-impact policies and disproportionate-burden policies.

The Department recognizes that a recipient may receive additional Federal funds or assistance from sources other than the Department. The Department does not envision that this rule will appreciably increase administrative costs or compliance costs for funding recipients who must also adhere to the regulations of another department or agency. This deregulatory action does not create any new obligations for its recipients. On the contrary, by eliminating disparate-impact liability from the regulation, it eliminates a source of regulatory confusion, narrows the conduct prohibited, and thus lessens the costs of compliance and potential liability. Moreover, recipients who receive funds for the same program or activity from more than one Federal entity already enter into separate contractual assurances with each funding entity, *see, e.g.*, 49 CFR 21.7. These contractual assurances already impose varying requirements that each Federal funding source deems necessary. Funding recipients will continue to be held to the most stringent contractual assurance and regulation.

Based on the analysis of the practical qualitative costs and benefits noted above, the Department believes this rule is consistent with the principles of Executive Orders 12866 and 13563, including the requirements, to the extent permitted by law, that 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.

Executive Order 14192 (Unleashing Prosperity Through Deregulation)

This final rule is expected to be an Executive Order 14192 deregulatory action. 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. Details on the estimated cost savings of this final rule can be found in the rule's economic analysis provided above.

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 regulations that are required by statute. Therefore, in accordance with Section 6 of Executive Order 13132, 64 FR 43255, 43257–58 (Aug. 4, 1999), the Department has determined these amendments do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. § 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. Whenever an agency is required by 5 U.S.C. § 553, or any other law, to publish general notice of proposed rulemaking for any proposed rule, the agency must conduct and publish for public comment a regulatory flexibility analysis. Because the Department is not required to publish a proposed rulemaking for this action, an analysis under the RFA is not required.

Further, the Department, in accordance with 5 U.S.C. 605(b), has reviewed these

regulations and certifies that the rule’s changes will not have a significant economic impact on a substantial number of small entities, in large part because these regulatory changes do not impose any new substantive obligations on Federal funding recipients. The rule amends and clarifies existing regulations that are required by Title VI. The rule merely brings the Department into compliance with the Equal Protection Clause and harmonizes the scope of its regulations to conform with the scope of Title VI, which does not prohibit conduct having an unintentional disparate impact. All Federal funding recipients have been bound by the existing standards that will remain in place after this rule since their initial promulgation.

Executive Order 12250

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

National Environmental Policy Act

The Department has analyzed the environmental impacts of this action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. § 4321 *et seq*.) and has determined that it is categorically excluded pursuant to DOT Order 5610.1D, available at https://www.transportation.gov/mission/dots-procedures-considering-environmental-impacts. Categorical exclusions are actions identified in an agency’s NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). The purpose of this rulemaking is to eliminate

disparate-impact liability. Section 9(f) of DOT Order 5610.1D states that a DOT Operating Administration can use the categorical exclusions developed by another Operating Administration. This action is covered by the categorical exclusion listed in the Federal Transit Administration's implementing procedures, "[p]lanning and administrative activities that do not involve or lead directly to construction, such as: . . . promulgation of rules, regulations, directives. . . ." 23 CFR 771.118(c)(4). In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

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.

Congressional Review Act

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

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 49 CFR Part 21

Administrative practice and procedure, Civil rights, Equal employment opportunity, Grant programs.

Accordingly, for the reasons set forth above, and by the authority vested in me as the Secretary of Transportation, part 21 of title 49 of the Code of Federal Regulations is amended as follows:

PART 21—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

1. The authority citation for part 21 is revised to read as follows:

Authority: 42 U.S.C. 2000d, 2000d-1, 2000d-7; E.O. 12250, 45 FR 72995, 3 CFR, 1980 Comp., p. 298; E.O. 14281, 90 FR 17537.

2. In § 21.5:

a. Remove and reserve paragraph (b)(2);

b. Revise paragraph (b)(3);

c. Remove paragraph (b)(7); and

d. Revise paragraphs (c) and (d).

The revisions read as follows:

§ 21.5 Discrimination prohibited.

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(b) ***

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

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(c) *Employment practices*. (1) Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees).

(2) Federal financial assistance to programs under laws funded or administered by the Department that have as a primary objective the providing of employment include those set forth in appendix B to this part.

(d) *Selection of site or location*. A recipient may not make a selection of a site or location of a facility if the purpose of that selection is 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 rule applies, on the grounds of race, color, or national origin; or if the purpose is to substantially impair the accomplishment of the objectives of this part.

Issued in Washington, DC.

Sean P. Duffy,

Secretary of Transportation.

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