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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 15

[Docket No. USDA-2026-0002]

RIN 0503-AA89

Rescinding Portions of U.S. Department of Agriculture Title VI Regulations to Conform More Closely with the Department of Justice's Regulations To Implement Executive Order 14281

AGENCY: Office of the Assistant Secretary for Civil Rights, USDA.

ACTION: Final rule.

SUMMARY: By this rule, the U.S. Department of Agriculture (USDA) amends its regulations implementing Title VI of the Civil Rights Act of 1964 (7 CFR part 15) to eliminate disparate-impact liability. These amendments align USDA's regulations with the original public meaning of this statute, avoid constitutional concerns, reduce compliance costs, and serve the public interest. In addition, these revisions conform to Executive Order 14281.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Theodore Gutman, Associate Assistant Secretary for Civil Rights, USDA, 1400 Independence Avenue SW., Washington, DC 20250-1400, (202) 720-3808.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

USDA is rescinding portions of its regulations promulgated pursuant to Title VI, 42 U.S.C. 2000d-1, to more closely align its regulations to Title VI, which prohibits intentionally discriminatory conduct, *see* 42 U.S.C. 2000d. There are serious statutory and constitutional concerns with the legality of USDA's Title VI regulations that 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 sufficiently serve the public interest. First, this rule rescinds the full text of 7 CFR 15.3(b)(2), which currently prohibits the utilization of "criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin." Second, this rule removes the two uses of the phrase "or effect" from 7 CFR 15.3(b)(3). Third, this rule rescinds the full text of 7 CFR 15.3(b)(6). Fourth, this rule rescinds the full text of the last two sentences of 7 CFR 15.3(c), which addresses employment practices subject to Federal financial assistance.

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 USDA would take this action independent of Executive Order 14281, the Order supports this action.

USDA's position is also informed by recent decisions that required USDA to establish proof of intentional discrimination to justify race-based classifications in certain USDA programs. For example, in *Strickland v. Vilsack*, 736 F. Supp. 3d 469, 480-83 (N.D. Tex. 2024), a Federal court issued a preliminary nationwide injunction against USDA's use of race-based criteria in its 2022 Emergency Relief Program (ERP 2022) for failure to satisfy strict scrutiny under the Equal Protection Clause. *See also Miller v. Vilsack*, No. 4:21-cv-00595, 2021 WL 11115194 (N.D. Tex. 2021) (enjoining USDA from administering a recently enacted loan-forgiveness program under the American Rescue Plan Act of 2021, which linked certain eligibility requirements to race-based classifications, because those classifications failed to satisfy strict scrutiny).

This rule makes clear that USDA's Title VI regulations do not prohibit conduct or activities that have a disparate impact and prohibit only intentional discrimination. Thus, USDA will not pursue Title VI disparate-impact liability against its Federal-funding recipients.

II. Discussion

A. Statutory History of Title VI

Title VI of the Civil Rights Act of 1964, as amended, provides: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. 2000d. Title VI also directs Federal departments and agencies that extend Federal financial assistance to "effectuate the provisions of" Title VI "by issuing rules, regulations, or orders of general applicability." 42 U.S.C. 2000d-1. The section of Title VI that sets forth the prohibited conduct, 42 U.S.C. 2000d, prohibits only intentional discrimination and makes no reference to unintentional disparate effects or impact. *See Alexander v. Sandoval*, 532 U.S. 275, 280 (2001) ("[I]t is . . . beyond dispute—and no party disagrees—that [Title VI] prohibits only intentional discrimination."). The statute does not explicitly provide any Federal department or agency with authority to prohibit conduct having an unintentional disparate impact. And despite having ample opportunities, Congress has not amended Title VI to impose disparate-impact liability. USDA's Title VI implementing regulations are codified at 7 CFR Part 15.

B. 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, 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*, 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 [Title VI] prohibits only intentional discrimination."). In *Sandoval*, the Supreme Court held that private plaintiffs lacked a private right of action to enforce "disparate-impact regulations" of the Department of Justice (DOJ). *Id.* at 285–87. The Supreme Court had previously found a private cause of action to enforce Title VI's bar on intentional discrimination, *id.* at 279–80, but that conclusion did not extend to enforcing DOJ's "disparate-impact regulations." *Id.* at 285. As the Supreme Court explained, it was "clear" that "the disparate-impact regulations do not simply apply" the statutory prohibition, as the regulations "forbid conduct that [Title VI] permits," so it was 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 were in "considerable tension" with the Supreme Court's Title VI precedents. Similarly, the regulations did not "authoritatively" construe Title VI because the regulations "forbid conduct"—namely, policies that unintentionally result in a disparate impact—that Title VI "permits." *Id.* at 281–82, 284–85; *see also id.* at 286 n.6 ("[Title VI] permits the very behavior that the regulations forbid.").

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

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.*

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 USDA's currently existing Title VI regulations, consistent with the Order's policy and purpose.

Even in the absence of Executive Order 14281, USDA would have taken steps to adopt the policy to eliminate the use of disparate-impact liability under Title VI. USDA believes that all citizens should be treated equally under the law, and that USDA, through its funding programs and other activities, should promote equality of opportunity, not equal outcomes. Doing so encourages meritocracy and treatment of individuals as individuals—principles that are at the foundation of American democracy. Imposing disparate-impact liability endangers these policy objectives, and USDA accordingly has concluded that it is appropriate to amend its regulations to rescind provisions concerning disparate impact. Disparate-impact liability also raises serious constitutional concerns, is in considerable tension with the original public meaning of Title VI, creates confusion, increases the costs of compliance, and does not serve the public interest. After considering the relevant issues and factors and weighing the relevant considerations, USDA concludes that these reasons together support eliminating disparate-impact liability from USDA's Title VI regulations. In any event, USDA concludes that each reason is a separate and independent basis for eliminating disparate-impact liability from USDA's Title VI regulations.

D. Need for Rulemaking

USDA's regulation at 7 CFR 15.3, entitled "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 15.3(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 individuals to discrimination because of their race, color, or national origin." 7 CFR 15.3(b)(2).

Beyond that general prohibition, section 15.3(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. Section 15.3(b)(6) concerns the use of "affirmative action," and provides that funding recipients may (and sometimes must) use race, color, or national origin to overcome unintentional disparate "effects." 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. Finally, section 15.3(c) addresses prohibited discriminatory employment practices and extends beyond intentional discrimination to prohibiting conduct that "tends" to have a discriminatory effect.

There are serious statutory and constitutional concerns with the legality of the USDA's Title VI disparate-impact regulations. USDA 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. *Sandoval* calls into serious doubt the legality of USDA's "disparate-impact regulations." *Sandoval*, 532 U.S. at 281–82, 284–85 (noting that DOJ's regulations, which USDA's regulations mirror, 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 USDA 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). And even in the absence of Supreme Court precedent, USDA would have concluded that the best reading of Title VI is that it prohibits only intentional discrimination.

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

There are also serious concerns about whether USDA'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 USDA's regulations is triggered by unintentional disparate outcomes, which the recipient may not even know about without investigation. To evaluate and avoid this risk, the funding recipient must incur investigatory costs, such as conducting an impact analysis, and is coerced to proactively consider race, color, and national origin, and potentially use it to change the unintended disparate outcomes.

In short, disparate-impact liability encourages and, in some cases, requires covered entities to engage in the intentional use of race and racial balancing to eliminate those disparate outcomes by treating certain racial groups differently from others—the exact conduct the Equal Protection Clause forbids. *See id*. The serious constitutional concerns raised by these perverse

incentives further confirm that the best reading of Title VI is that it prohibits only intentional discrimination and does not authorize USDA to impose disparate-impact liability. *See Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988) ("[W]here an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." (citing *NLRB v. Catholic Bishop of Chi.*, 440 U.S. 490, 499–501, 504 (1979))).

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

Similarly, the "affirmative action" provision authorizes and sometimes requires the intentional use of race without requiring that this intentional use be narrowly tailored to serve a recognized compelling interest. Instead, it encourages intentional racial balancing "to overcome the effects of" unintended racial disparities. 7 CFR 15.3(b)(6). Thus, for substantially the same reasons as above, the "affirmative action" provision raises serious constitutional concerns.

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

USDA also has serious policy concerns with the imposition of disparate-impact liability. While USDA 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. 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, including USDA's regulations. 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 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"). This confusion undermines the law's ability to teach principles of nondiscrimination and is evident in specific grant proposals awarded by USDA in past years explicitly targeting certain racial groups.

For example, in February 2025, USDA terminated a financial assistance award that encouraged and promoted agriculture practices that focused on racial equity. Specifically, under the award, preference for educational and agricultural distribution opportunities was given based on race (see Award NR223A750001G001, USAspending.gov). And in April 2025, USDA terminated a financial assistance award that focused on increasing resources and opportunities for locally grown food available to families and entrepreneurs of a specific race. One objective of the award was to provide several thousands of dollars' worth of fresh produce for free to families of a specific race (see Award NR225F48XXXXG004, USAspending.gov).

USDA believes that 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.

USDA 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 USDA 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, under USDA's Title VI regulations, which the current changes do not alter, "recipients should have available for the Agency racial

and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs." 7 CFR 15.3(b). Both USDA 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.

USDA has also considered an alternative that would preserve disparate-impact liability only for certain Federally assisted programs. After evaluation, USDA determined that applying disparate-impact standards to only a subset of programs would create arbitrary distinctions not grounded in Title VI. Such an approach would lead to inconsistent application of nondiscrimination obligations, create confusion for recipients that operate across multiple program areas, and generate uneven compliance burdens. It would also fail to resolve the statutory and constitutional concerns identified by the Supreme Court, as noted within the revised rule.

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 USDA's serious legal and policy concerns. USDA determines that any benefits from alternative versions of disparate-impact liability are outweighed by USDA'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. USDA 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.

USDA has additionally considered the potential reliance interests of funding recipients and others on the disparate-impact regulations. *Sandoval*, however, cast serious doubt on the continuing viability of all Federal Title VI disparate-impact regulations more than 20 years ago.

At least since then, USDA's enforcement of its Title VI disparate-impact regulations has been minimal and sporadic. And Executive Order 14281 also directed all agencies to "deprioritize enforcement of all statutes and regulations to the extent they include disparate-impact liability," including USDA's Title VI disparate-impact regulations. 90 FR at 17538. USDA accordingly believes that any reliance interests should be minimal and do not outweigh USDA's legal and other policy concerns. Further, each of USDA's concerns, whether considered cumulatively or separately, outweighs any reliance interests.

USDA 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 USDA could continue to pursue disparate-impact liability. Repealing the disparate-impact regulations would eliminate this incongruent enforcement.

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

III. USDA's Regulatory Amendments

USDA is amending its regulations in 7 CFR part 15 to align with the statutory text. This rule's regulatory changes address the concerns that the Supreme Court raised in *Sandoval* and the other legal and policy concerns discussed above, harmonize the implementing regulations with Title VI, promote consistent enforcement among private plaintiffs and USDA, and provide much needed clarity to the courts and USDA Federal-funding recipients and beneficiaries.

For the reasons summarized above, USDA amends the following provisions in its Title VI implementing regulation that explain the particular types of discrimination prohibited, located at 7 CFR 15.3.

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
15.3(b)(2)	Full text of paragraph: "(2) A recipient . . . or national origin."	"[Reserved]"
15.3(b)(3)	"or effect" from both places	
15.3(b)(6)	Full text of paragraph (6), subparts (i) and (ii).	
15.3(c)	"Where a primary objective of the . . . . which supersedes it."	

B. Section-by-Section Analysis

Section 15.3(b)(2)

Section 15.3(b)(2) is the general prohibition of conduct having an unintentional disparate impact. It expands prohibited conduct from purposeful discrimination to impose liability on Federal-funding recipients who "utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination." Because section 15.3(b)(2)'s only purpose is to prohibit disparate-impact discrimination, this rule deletes this paragraph in its entirety. It thus amends the regulations to conform to Title VI and to address the legal and policy considerations and determinations described in this document. The rule replaces paragraph (b)(2) with a placeholder to maintain the numbering accuracy of previous citations and other references to parts of this section.

Section 15.3(b)(3)

Section 15.3(b)(3) addresses a Federal-funding recipient's or applicant's selection of the site or location of facilities. It provides that a funding recipient may not make selections with the "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 USDA's implementing regulations. The paragraph's two references to "effect" extend its scope to conduct having an unintentional disparate impact. This rule deletes both "or effect" references to conform paragraph (b)(3) more closely Title VI and to address the legal and policy considerations and determinations described in this document.

Section 15.3(b)(6)

Section 15.3(b)(6) deals with "affirmative action." Paragraph (b)(6)(ii) authorizes affirmative action even in the absence of a finding of prior discrimination in a program "to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin." This provision points not to intentional discrimination, but rather to the unintentional "effects of conditions." It consequently encourages intentional racial classifications, racial preferences, and other race-based actions without specifying the compelling governmental interest and narrow tailoring that the Equal Protection Clause demands. This section has long been unlawful under the Equal Protection Clause.

Paragraph (b)(6)(i) requires that a recipient "must take affirmative action to overcome the effects of prior discrimination" if, in "administering a program," the funding "recipient has previously discriminated against persons on the ground of race, color, or national origin." This provision goes beyond the Equal Protection Clause, which permits 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." 7 CFR 15.3(b)(6). 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 contrary to USDA'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)(6).

Section 15.3(c)

Section 15.3(c) addresses prohibited discriminatory employment practices. The first two sentences of paragraph (c) prohibit intentionally discriminatory employment practices in a program when a primary objective of the Federal financial assistance the program receives is to provide employment. The final two sentences of paragraph (c) extend the prohibition on discrimination to employment practices of the funding recipient even "[w]here a primary objective of the Federal financial assistance is not to provide employment" if discrimination in the non-funded 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 or activity of the applicant or recipient to which these regulations apply." This sentence prohibits not only intentional discrimination but extends the prohibition to conduct that "tends" to have a discriminatory effect.

Moreover, USDA notes that paragraph (c)'s extension to employment practices where the Federal funding's primary objective is not to provide employment conflicts with the statutory limitation found in 42 U.S.C. 2000d-3. That section states that "[n]othing contained in [Title VI] shall be construed to authorize action under [Title VI] by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment." 42 U.S.C. 2000d-3; *see also Johnson v. Transp. Agency, Santa Clara Cnty.*, 480 U.S. 616, 627–28 n.6 (1987) (citing the statutory limitation and noting Congress's intent that Title VI not "impinge" on Title VII, which prohibits discriminatory employment practices). The rule deletes the last two sentences of paragraph (c) to amend the regulation so that it more closely adheres to Title VI and to address the legal and policy considerations and determinations described in this document.

IV. Severability

USDA's position is that each of the amendments serve a vital, related, but distinct purpose. USDA 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. USDA would adopt any of the amendments independently of the invalidity of a separate amendment.

V. Regulatory Certifications

Administrative Procedure Act

USDA issues this final rule without prior public notice and comment or a delayed effective date. This action is taken 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." 28 CFR 42.102(c); *see also* 28 CFR 42.105 (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).

Furthermore, applying the section 553(a)(2) exception is consistent with the Office of Management and Budget's (OMB) definition of "Federal financial assistance" under 2 CFR 200.1. That definition categorizes assistance in substantially overlapping categories as the APA exception for rules relating to public property, loans, grants, benefits, or contracts. Because the forms of assistance administered by USDA fall under these categories, USDA issues this final rule without prior public notice and comment or delayed effective date under 5 U.S.C. 553(a)(2).

Executive Orders 12866 and 13563 (Regulatory Review)

USDA has determined that its final rulemaking is a "significant regulatory action" under section 3(f) of Executive Order 12866, 58 FR 51735, 51738 (Sep. 30, 1993), but not an "economically significant" under section 3(f)(1). This rule has been submitted to the Office of Management and Budget (OMB) for review and aligns with the principles of Executive Orders 12866 and 13563, which direct agencies to assess costs and benefits and select approaches that maximize net benefits, acknowledging that some values are difficult to quantify.

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

permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify. *Id.*

The rule is intended to conform regulations to Executive Order 14281, address concerns regarding USDA's Title VI regulations raised by the Supreme Court in *Sandoval*, harmonize the scope of conduct prohibited by Title VI, promote enforcement consistency, and provide clarity to courts and funding recipients regarding the scope of USDAs Title VI regulations. In short, this rule is necessary to conform USDA's regulation to existing statutory law, as interpreted by the Supreme Court.

Data limitations make the costs and benefits of the rule difficult to quantify. Although it does not represent the monetary impact of the rule, USDA issued approximately 4,707 separate awards totaling approximately $22,028,005,953.56 over the past four years. USDA does not track which of its investigations and compliance reviews involve solely allegations of disparate-impact discrimination. For enforcement actions that relate to both intentional discrimination and conduct having an unintentional disparate impact, USDA does not track and cannot reliably quantify the costs attributable to the disparate-impact portions of the enforcement actions. That the existence of a disparate impact is sometimes a factor that may be considered in determining whether discrimination is intentional further impedes monetizing costs and benefits. Therefore, the overall cost effect on USDA is difficult to quantify. USDA is unable to quantify how funding recipients will respond to the regulatory changes. But the deregulatory action should result in greater flexibility and lower compliance costs for recipients.

Qualitatively, the deregulatory action per Executive Order 13563 reduces uncertainty in Title VI interpretation, reduces the requirements that may be enforced by USDA, and brings USDA's regulation in line with the law.

USDA recognizes that a funding recipient may receive Federal funds from sources other than USDA. USDA does not envision that this rule will appreciably increase administrative or compliance costs for funding recipients who must also adhere to the regulations of another

department or agency. This deregulatory action does not create any new obligations for funding recipients. On the contrary, by eliminating disparate-impact liability from the regulation, the rule 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.*, 7 CFR 15.4. 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, USDA that this rule is consistent with the principles of Executive Orders 12866 and 13563, including the requirements that, to the extent permitted by law, USDA 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)

Executive Order 14192 requires an agency, unless prohibited by law, to identify at least 10 existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation. 90 FR 9065 (Jan. 31, 2025). In furtherance of this requirement, section 3(c) of the Order requires that "any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations." *Id.* This rule eliminates unnecessary regulation by revising the USDA's current Title VI regulations to remove provisions extending prohibited conduct to include conduct having an unintentional disparate impact—thereby aligning the scope of these regulations with the governing statute. Accordingly, USDA expects this rule to be a deregulatory action under Executive Order 14192.

Executive Order 14294 (Fighting Overcriminalization in Federal Regulations)

Executive Order 14294 requires agencies promulgating regulations with criminal regulatory offenses to explicitly describe the conduct subject to criminal enforcement, the authorizing statutes, and the *mens rea* standard applicable to each element. 90 FR 20363 (May 9, 2025). This final rule does not impose any criminal regulatory penalties and is therefore exempt from the requirements of Executive Order 14294.

Executive Order 13132 (Federalism)

This rule will not have a substantial, direct effect on the relationship between the national government and the States, on the distribution of power and responsibilities among various levels of government, or on States' policymaking discretion. States that choose to participate in USDA programs and receive Federal financial assistance from USDA 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 other funding recipients to new obligations. In accordance with section 6 of Executive Order 13132, 64 FR 43255, 43257-58 (Aug. 4, 1999), USDA has determined that these amendments do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and (b)(2) of Executive Order 12988 to specify provisions in clear language. See 61 FR 4729. Pursuant to section 3(b)(1)(I) of the Executive Order, nothing in this final rule (or in any administrative policy, directive, ruling, notice, guideline, guidance, or writing) relating to USDA programs is intended to create any legal or procedural rights enforceable against the United States.

Executive Order 12250

Pursuant to section 1-202 of Executive Order 12250, DOJ has the responsibility to "review . . . proposed rules . . . of the Executive agencies" implementing nondiscrimination statutes such as Title VI in order to identify those which are inadequate, unclear or unnecessarily inconsistent." Additionally, section 1-101 of Executive Order 12250 delegated the President's

responsibility to approve Title VI regulations to the Attorney General. *See* 42 U.S.C. 2000d-1. DOJ has reviewed and approved this rule.

Regulatory Flexibility Act

This rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, 604, because, for the reasons described above, no notice of proposed rulemaking is required under 5 U.S.C. 553. *See Or. Trollers Ass'n v. Gutierrez*, 452 F.3d 1104, 1123–24 (9th Cir. 2006) (noting that the RFA does not apply when an agency validly invokes an exception to the public comment requirements of 5 U.S.C. 553).

Further, USDA has reviewed this rule in accordance with the RFA and certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule amends and clarifies existing regulations that are required by Title VI. The rule merely brings USDA 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 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.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501 *et seq.*, excludes from its coverage any 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 USDA 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 does not impose any new or additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

List of Subjects in 7 CFR Part 15

Aged, Civil rights, Religious discrimination, Sex discrimination.

Accordingly, for the reasons stated in the preamble, USDA amends 7 CFR part 15 as follows:

PART 15—NONDISCRIMINATION

1. The authority citation for part 15 continues to read as follows:

Authority: 5 U.S.C. 301; 29 U.S.C. 794.

2. Amend § 15.3 by:

a. Removing and reserving paragraph (b)(2);

b. Revising paragraph (b)(3);

c. Removing paragraph (b)(6); and

d. Revising paragraph (c).

The revisions read as follows:

§ 15.3 Discrimination prohibited.

* * * * *

(b) * * *

(3) In determining the site or location of facilities, an applicant or recipient may not make selections with the purpose of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any of its programs or activities to which the regulations in this part apply, 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 and the regulations in this part.

* * * * *

(c) *Employment practices.* Where a primary objective of the Federal financial assistance to a program to which the regulations in this part apply is to provide employment, a recipient may not, directly or through contractual or other arrangements, subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under the program including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities. This paragraph (c) applies to programs where a primary objective of the Federal financial assistance is:

(1) To reduce unemployment;

(2) To assist individuals in meeting expenses incident to the commencement or continuation of their education or training; or

(3) To provide work experience which contributes to education or training.

* * * * *

Stephen Vaden,

Deputy Secretary, U.S. Department of Agriculture.

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