



DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 21

Federal Emergency Management Agency

44 CFR Part 7

[Docket No. DHS-2025-1009]

RIN 1601-AB22

Rescinding Portions of DHS Title VI Regulations to Conform More Closely with the Statutory Text and to Implement Executive Order 14281

AGENCY: Office of the Secretary, Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: By this rule, DHS amends its regulations implementing Title VI of the Civil Rights Act of 1964 (Title VI) consistent with a recent rule issued by the Department of Justice (DOJ). Like the DOJ rule, this rule aligns the DHS regulations more closely with Title VI's original public meaning, avoids constitutional concerns, reduces compliance costs, and serves the public interest.

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

FOR FURTHER INFORMATION CONTACT: Ron Sartini, Acting Officer for Civil Rights and Civil Liberties, Office for Civil Rights and Civil Liberties, U.S. Department of Homeland Security, CRCLCompliance@hq.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. DHS and FEMA Title VI Regulations

The Homeland Security Act of 2002, Pub. L. 107–296, 116 Stat. 2135 (Nov. 25, 2002), codified as amended at 6 U.S.C. 101 *et seq.*, created DHS and transferred to it many functions related to homeland security, including the handling of natural and manmade crisis and emergency planning. *See, e.g.*, 6 U.S.C. 111, 311–323. Pursuant to the Homeland Security Act, the Federal Emergency Management Agency (FEMA) was merged into DHS effective March 1, 2003.¹ As part of the establishment of procedures, DHS issued an interim final rule on March 6, 2003, to effectuate Title VI, which prohibits discrimination on the basis of race, color, or national origin in any programs or activities receiving Federal financial assistance.² The DHS Title VI regulations (DHS rule) were included in a new Part 21 of Title 6 of the Code of Federal Regulations (CFR).

The DHS rule effectuated the provisions of Title VI by providing for the conduct of investigations and procedures for effecting compliance, among other requirements. The rule generally mirrored rules in effect at that time at other departments, including those applicable to the constituent components that were transferred to DHS. *See, e.g.*, 44 CFR part 7, Subpart A. Because FEMA had previously issued a Title VI rule under its own preexisting authority,³ that rule, at 44 CFR part 7, Subpart A (FEMA rule), remained in effect for FEMA under the terms of the DHS rule.⁴

¹ Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135 (Nov. 25, 2002).

² 68 FR 10905 (Mar. 6, 2003) (implementing Title VI of the Civil Rights Act of 1964); *see also* 42 U.S.C. 2000d.

³ *See, e.g.*, 30 FR 321 (Jan. 9, 1965) (Office of Emergency Planning Rule); 68 FR 51334 (Aug. 26, 2003) (omnibus update to Title VI rules, including FEMA rules).

⁴ *See* 6 CFR 21.1 (“The provisions established by this part shall be effective for all components of the Department, including all Department components that are transferred to the Department, except to the extent that a Department component already has existing title VI regulations.”).

B. 2025 DOJ Rule

Pursuant to Executive Order 12250, “[t]he Attorney General shall coordinate the implementation and enforcement by Executive agencies of . . . Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).” Accordingly, DOJ acts as the lead federal agency 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.” Further, as part of this responsibility, Executive Order 12250 provides that the Attorney General must approve other agencies’ Federal regulations implementing Title VI.

On December 10, 2025, DOJ issued a final rule (DOJ rule) amending portions of its Title VI regulations to more closely align its regulations to the scope of intentionally discriminatory conduct that Congress prohibited in Title VI. 90 FR 57141 (Dec. 10, 2025). DOJ explained that there were serious statutory and constitutional concerns with the Title VI regulations, which went beyond intentional discrimination by prohibiting conduct that has an unintentional disparate impact. 90 FR at 57141. DOJ also explained that policy concerns independently supported amending its Title VI regulations to no longer cover conduct that has an unintentional disparate impact. 90 FR at 57143-57145. The DOJ rule accordingly rescinded those portions of the regulations that prohibited conduct having a disparate impact. *Id.*

DOJ also explained that its revised rule is consistent with Executive Order 14281 “*Restoring Equality of Opportunity and Meritocracy*” (90 FR 17537 (Apr. 28, 2025)). 90 FR at 57142-43. That Order stated that “[i]t is the policy of the United States to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, Federal civil rights laws, and basic American ideals.” 90 FR 17537. The Order directed the Attorney General to, among other things, review Title VI regulations and “initiate appropriate action to repeal or amend” these regulations “to the extent they contemplate

disparate-impact liability.” *Id.* at 17538. DOJ explained that although DOJ would have issued its rule independent of Executive Order 14281, the Order supports the DOJ rule. 90 FR 57141. Like DOJ, DHS would issue its rule independent of Executive Order 14281, but the Order also supports DHS’s rule.

DOJ explained that the deletions make clear to DOJ Federal-funding recipients that DOJ’s Title VI regulations prohibit intentional discrimination and do not prohibit conduct or activities that have an unintentional disparate impact, and DOJ thus will not pursue Title VI disparate-impact liability against its Federal-funding recipients. *Id.* at 57141.

DOJ also included a detailed discussion of the statutory and regulatory history surrounding Title VI and disparate-impact theories of discrimination, canvassed relevant Supreme Court precedent casting doubt on the lawfulness of existing regulations, and expressed serious policy concerns with the disparate-impact and affirmative-action aspects of then-existing DOJ regulations. *Id.* at 57141-45. DHS agrees with the substance of DOJ’s final rule and adopts and incorporates DOJ’s final rule preamble discussion in full, including the sections addressing: (1) statutory and regulatory history of Title VI; (2) relevant Supreme Court precedents; (3) serious legal and constitutional concerns; (4) serious policy concerns; (5) regulatory alternatives; and (6) reliance interests.

C. Need for Rulemaking

DHS’s regulations at 6 CFR 21.5, entitled “Discrimination prohibited,” and FEMA’s regulations at 44 CFR 7.5, entitled “Specific discriminatory actions prohibited,” contain 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.” There are serious statutory and constitutional concerns with the legality of DHS’s and FEMA’s Title VI disparate-impact regulations. DHS 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. *Alexander v. Sandoval*, 532 U.S. 275, 280, 286 n.6 (2001). That is the “single, best meaning” of Title VI. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 400 (2024). *Sandoval* calls into serious doubt the legality of DHS’s “disparate-impact regulations.” *Sandoval*, 532 U.S. at 281–82, 284–85 (noting that DOJ’s 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 DHS 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, DHS would have concluded that the best reading of Title VI is that it prohibits only intentional discrimination.

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

There are also serious concerns about whether DHS’s Title VI regulations pass constitutional muster under the Equal Protection Clause. As the Supreme Court recently held in

Students for Fair Admissions, Inc. v. President & Fellows of Harvard College (“*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. 181, 206 (2023) (internal quotation marks omitted) (first quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) and then quoting *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 289–90 (1978) (Powell, J.)). Despite the promises of the Equal Protection Clause, a funding recipient’s risk of disparate-impact liability under DHS’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 DHS 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. 6 CFR 21.5(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 DHS’s disparate-impact regulations. But even if the regulations were consistent with the statute, DHS 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, DHS 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

DHS also has serious policy concerns with the Title VI regulations’ imposition of disparate-impact liability. While DHS 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. 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, 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, among other things, many of the grant proposals that agencies awarded funds to in past years. Many of the past grant solicitations explicitly targeted certain racial groups. *See, e.g., DHS-23-CISA-127-CWDT-0001*, Cybersecurity Workforce Development and Training for Underserved Communities, <https://www.grants.gov/search-results-detail/347949> (posted May 5, 2023).

DHS 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 DHS 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 DHS's Title VI regulations, which the current changes do not alter, "recipients should have available for the Secretary racial and ethnic data showing the extent to which members of minority groups are beneficiaries of Federal financial assistance." 6 CFR 21.9(b). Both DHS 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.

DHS 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 education, disaster assistance, or housing. 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 DHS's serious legal and policy concerns. DHS determines that any benefits from adopting alternative versions of disparate-impact liability are outweighed by DHS'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. DHS 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 parts of the problem unaddressed and others inadequately addressed.

DHS 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 the regulations more than 20 years ago. And Executive Order 14281 also directed all agencies to “deprioritize enforcement of all statutes and regulations to the extent they include disparate-impact liability,” including specifically DHS’s Title VI disparate-impact regulations. 90 FR at 17538. DHS accordingly believes that any reliance interests should be minimal and do not outweigh DHS’s legal and other policy concerns. Further, each of DHS’s concerns, whether considered cumulatively or separately, outweighs any reliance interests.

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

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

II. Description of Rule

DHS is revising its Title VI regulations at 6 CFR part 21 and FEMA’s regulations at 44 CFR part 7 consistent with the DOJ rule, Title VI, Executive Order 14281, and related case law, as described in the DOJ rule.⁵ The changes collectively:

- Remove all disparate-impact language from DHS and FEMA Title VI regulations;
- Delete the affirmative-action provisions; and
- Ensure that DHS and FEMA regulations align with DOJ regulations, the statutory text of Title VI, Supreme Court precedent, and Executive Order 14281.

⁵ DHS notes that DOJ’s role as the lead agency for Title VI implementation under Executive Order 12250 provides an additional reason to conform to DOJ’s rule to ensure uniform, government-wide enforcement of Title VI obligations.

The practical effect of these changes is to make clear that DHS's Title VI regulations do not prohibit conduct or activities that have an unintentional disparate impact and prohibit only intentional discrimination, and that DHS will not pursue Title VI disparate-impact liability against DHS funding recipients.

A section-by-section analysis follows.

A. 6 CFR 21.5 (Discrimination prohibited)

DHS is updating the authority citation for 6 CFR part 21 to correct an apparent typographical error (prior text erroneously referenced 5 U.S.C. 310, and this rule corrects it to 5 U.S.C. 301) and add a reference to the Homeland Security Act.

DHS is removing and reserving paragraph 21.5(b)(2), which prohibited recipients from utilizing policies that merely *have the effect* of subjecting persons to discrimination because of their race, color, or national origin or substantially impairing program objectives with respect to individuals of a particular race, color, or national origin. This paragraph expanded 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.”

The removal makes clear that DHS will no longer pursue Title VI disparate-impact liability; only intentionally discriminatory conduct is prohibited. The paragraph is reserved to preserve numbering continuity. Note that nothing in this rule precludes DHS from considering statistical disparities as relevant evidence in determining whether discrimination was intentional. Consistent with DOJ's final rule, although disparate-impact liability is eliminated, data regarding disparate outcomes may still be probative of discriminatory purpose. Indeed, under DHS's Title VI regulations that the current changes do not alter, “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.” 6 CFR 21.9(b); *cf. also* 44 CFR 7.10(b). 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.

In paragraph (b)(3) (which relates to how recipients or applicants determine the site or location of facilities), DHS is removing both instances of the words “or effect.” The paragraph now bars selections made *with the purpose* of discrimination or defeating Title VI objectives, thereby limiting liability to intentional discrimination. This rule deletes both “or effect” references to conform paragraph (b)(3) more closely to the scope of liability Congress intended when it enacted Title VI and to address the legal and policy considerations and determinations described above.

DHS is removing paragraph (b)(6). This provision encourages, if not requires, recipients to take discriminatory actions to overcome *effects* of prior discrimination. It is deleted because it 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, color, or national origin preferences when the recipient may not want to. This is contrary to DHS’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. DHS will no longer encourage or require this use of race, color, or national origin through its regulation.

DHS is revising paragraph (c) to clarify the scope of Title VI coverage for employment practices and is deleting paragraphs (c)(2) and (c)(3). Revised paragraph (c) affirms that whenever a primary objective of the Federal financial assistance is to provide employment, recipients may not intentionally discriminate on the basis of race, color, or national origin in

employment practices under such programs. That prohibition also applies to programs in which a primary objective of the Federal financial assistance is (i) to assist individuals, through employment, to meet expenses incident to the commencement or continuation of their education or training, or (ii) to provide work experience that contributes to the education or training of the individuals involved. The applicable requirements for construction employment remain those specified in or pursuant to part III of Executive Order 11246, or any Executive Order that supersedes it. This revision conforms to 42 U.S.C. 2000d-3, removes the prior “tends to” extension beyond the statute, and removes the affirmative-action mandates currently contained in paragraphs (c)(1) and (c)(3). These changes amend the regulation so that it more closely adheres to the scope of conduct Congress prohibited with Title VI and the legal and policy considerations and determinations described in this document.

B. 44 CFR 7.5 (Specific discriminatory actions prohibited – FEMA)

DHS is updating the authority citation for 44 CFR part 7 to align with the authority citation for 6 CFR part 21. The only edit to regulatory text is to remove and reserve paragraph 7.5(b), which is analogous to the removal of 6 CFR 21.5(b)(2).

DHS notes that the Stafford Act contains a nondiscrimination provision calling for “such regulations as may be necessary for the guidance of personnel carrying out Federal assistance functions at the site of a major disaster or emergency.” 42 U.S.C. 5151(a). The regulations must “include provisions for insuring that the distribution of supplies, the processing of applications, and other relief and assistance activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status.” *Id.* FEMA implements this provision at 44 CFR 206.11, which will continue to impose such requirements. *See* 44 CFR 206.11(b).

The Stafford Act provision and its implementing regulation identify multiple additional protected classes (beyond race, color, and national origin) and require the provision of disaster assistance in an equitable and impartial manner, but do not expressly prohibit or otherwise

reference unintentional disparate-impact discrimination. Accordingly, FEMA has not made changes to 44 CFR 206.11 as part of this rulemaking. FEMA may in the future further interpret these Stafford Act-specific requirements as appropriate.

FEMA is also subject to 42 U.S.C. 5196f, a separate Stafford Act provision that directs FEMA to, among other things, (1) identify, in coordination with State and local governments, population groups with limited English proficiency and take into account such groups in planning for an emergency or major disaster; and (2) ensure that information made available to individuals affected by a major disaster or emergency is made available in formats that can be understood by certain populations. This rule does not change FEMA's implementation of those separate statutory requirements.

III. Severability

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

IV. Regulatory Requirements

A. Administrative Procedure Act

DHS is issuing 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." *See* 6 CFR 21.4(c); 44 CFR 7.2(c); *see also* 6 CFR 21.7;

44 CFR 7.7 (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’” (citation omitted)). *Cf. Education Programs or Activities Receiving or Benefitting from Federal Financial Assistance*, 82 FR 46655-01 (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 47899-01 (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 18285-02 (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 40687-01 (Aug. 11, 1981) (invoking the exception to suspend DOJ 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).

Prompt alignment with DOJ's Title VI rule is necessary to ensure uniform, government-wide administration of Title VI, eliminate regulatory uncertainty for DHS funding recipients, and avoid inconsistent enforcement. Although FEMA's general policy at 44 CFR 1.3 encourages public participation, that policy does not create enforceable rights and permits FEMA to depart from it in its discretion. DHS departs here to promptly harmonize its rule with DOJ's rule and mitigate confusion and compliance costs for recipients.

B. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Regulatory Review), and 14192 (Unleashing Prosperity Through Deregulation)

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. 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.* Executive Order 14192 (Unleashing Prosperity Through Deregulation) directs agencies to significantly reduce the private expenditures required to comply with Federal regulations and provides that “any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.”

The Office of Management and Budget (OMB) has designated this rule a “significant regulatory action” under section 3(f) of Executive Order 12866, although not economically significant under section 3(f)(1). Accordingly, the rule has been reviewed by the Office of Management and Budget.

This final rule is considered an Executive Order 14192 deregulatory action.

As explained in the preamble, the regulatory modifications this rule makes are necessary to conform DHS regulations to the corresponding DOJ regulations, Title VI, Executive Order 14281, and related case law. The practical effect of these changes is to make clear that DHS’s Title VI regulations do not prohibit conduct or activities that have a disparate impact but prohibit only intentional discrimination and that DHS will not pursue Title VI disparate-impact liability against DHS funding recipients.

As with the DOJ rule, data limitations make the costs and benefits of this rule difficult to quantify. This rule affects DHS funding recipients. DHS issued approximately 274,000 separate awards totaling approximately \$140 billion from FY2022-FY2024⁶. In FY2024 alone, DHS issued approximately 35,000 separate awards totaling \$43.4 billion. Table 1 shows the number of grants and grant awards for DHS for FY2024.

Table 1. DHS Grants by Component FY2024

DHS Component	Grants	Grant Awards (\$ million)
FEMA Total	34,738	\$43,143
Disaster Assistance Grants	28,436	\$35,892
Fire Safety Grants	2,264	\$809
Non-Disaster Grants	1,103	\$3,896
Fire Management Assistance Grants	172	\$161
Hazard Mitigation Assistance Grants	2,763	\$2,385
Coast Guard	105	\$125
Other DHS Components*	151	\$170
Total DHS (FEMA+USCG+DHS Other)	34,994	\$43,438
* Includes: Countering Weapons of Mass Destruction, Cybersecurity and Infrastructure Security Agency, Office of Procurement Operations, Office of the Under Secretary for Science and Technology, U.S. Citizenship and Immigration Services, U.S. Secret Service, and U.S. Immigration and Customs Enforcement.		

DHS does not have ready access to comprehensive information regarding which of its

⁶ DHS used FY2022-2024 data to capture the most recent complete fiscal years. DHS did not include earlier data since FY2020-21 include substantial grant funding in response to the Covid-19 pandemic that is not representative of expected future grant funding. Data from [usaspending.gov](https://www.usaspending.gov). Grant award amounts determined from fiscal year total obligations, adjusted for 2024 dollars using GDP Deflator. (Accessed September 3, 2025)

Title VI-related investigations and compliance reviews involve solely allegations of disparate-impact discrimination. For enforcement actions that relate to both intentional discrimination and unintentional disparate impact, DHS cannot reliably quantify the costs attributable to the varying disparate-impact portions of enforcement actions. Further impeding monetizing costs and benefits is that disparate impact is sometimes a factor that is considered in determining whether discrimination is intentional. Therefore, the overall cost effect on DHS is difficult to quantify. However, this deregulatory action should decrease DHS's enforcement costs. In addition, a benefit of this rule is to align DHS's regulations with DOJ regulations, statutory text, and Supreme Court precedent, as well as to address DHS's serious policy concerns with the existing regulations.

DHS is similarly 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. DHS recognizes that a funding recipient may receive additional federal funds from sources other than DHS. DOJ noted in its rule that DOJ expected its rule to cause other federal departments and agencies to consider similarly revising their Title VI regulations. Like DOJ, DHS does not envision that this rule will appreciably increase administrative costs or compliance costs for funding recipients who must also adhere to the regulations of another department or agency. This deregulatory action does not create any new obligations for funding recipients. On the contrary, by eliminating disparate-impact liability from the regulation, this rule eliminates a source of regulatory confusion, as discussed in section I.C.2 of this preamble, and narrows the conduct prohibited. This rule therefore reduces 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.*, 6 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, DHS believes that this rule is consistent with the principles of Executive Orders 12866 and 13563, including the requirements that, to the extent permitted by law, DHS adopt a regulation only upon a reasoned determination that its benefits justify its costs and choose a regulatory approach that maximizes net benefits.

C. 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.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a final regulatory flexibility analysis that describes the effect of a rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions) only if the agency was required “to publish a general notice of proposed rulemaking” prior to issuing the final rule. *See* 5 U.S.C. 604(a). However, even if these regulations were subject to general notice requirements, DHS, 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 DHS into compliance with the Equal Protection Clause and harmonizes the scope of its regulations 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.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number issued by the OMB. This rule does not propose any new, nor any revisions to existing, “collection[s] of information” as that term is defined under the Paperwork Reduction Act of 1995 and its implementing regulations, 5 CFR part 1320.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (“UMRA”) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and Tribal governments. Title II of the UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule (or final rule for which the agency published a proposed rule) that includes any Federal mandate that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. The term “Federal mandate” means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 658(6), 1502(1). A “Federal intergovernmental mandate,” in turn, is a provision that would impose an enforceable duty upon State, local, or Tribal governments (except as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program). *See* 2 U.S.C. 658(5). And the term “Federal private sector mandate” refers to a provision that would impose an enforceable duty upon the private sector (except as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program). *See* 2 U.S.C. 658(7).

This rule is not subject to the UMRA because DHS did not publish a proposed rule prior to this action. In addition, the UMRA’s requirements do not apply to any provision in a

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). This rule is exempted from the UMRA on that basis. In addition, DHS has determined that this rulemaking will not result in the expenditure by state, local, and tribal governments, in the aggregate, nor by the private sector, of \$100 million or more in any one year as a result of a Federal mandate, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the UMRA.

G. Congressional Review Act

The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804(2).

H. National Environmental Policy Act

DHS and its components analyze final actions to determine whether the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, applies to them and, if so, what degree of analysis is required. DHS Directive 023-01 Rev. 01 and Instruction Manual 023-01-001-01 Rev. 01 (Instruction Manual) establish the policies and procedures that DHS and its components use to comply with NEPA, 42 U.S.C. 4321 *et seq.*

NEPA allows Federal agencies to establish categories of actions that experience has shown do not, individually or cumulatively, have a significant effect on the human environment and, therefore, do not require an environmental assessment (EA) or environmental impact statement (EIS). *See* 42 U.S.C. 4336(a)(2), 4336e(1). The Instruction Manual, Appendix A lists the DHS Categorical Exclusions.

Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no

extraordinary circumstances exist that create the potential for a significant environmental effect.

See Instruction Manual 023-01 at V.B(2)(a)-(c).

This rule aligns the conduct prohibited by DHS regulations more closely to the conduct Congress prohibited when enacting Title VI, consistent with Executive Order 14281. DHS has reviewed the rule and finds that the rule is of a strictly administrative or procedural nature; implements, without substantive change, statutory requirements; and amends an existing regulation without changing its environmental effect.

Accordingly, DHS finds that the rule clearly fits within categorical exclusion A3(a), (b), and (d) established in DHS's NEPA implementing procedures, and no further NEPA analysis is required.

I. Federalism

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. DHS has analyzed this rule under this order and determined it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

J. Civil Justice Reform

This rule meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

List of Subjects

6 CFR Part 21

Civil rights, Reporting and recordkeeping requirements.

44 CFR Part 7

Administrative practice and procedure, Aged, Civil rights, Reporting and recordkeeping requirements.

Regulatory Amendments

For the reasons set forth in the preamble, under the authority of 6 U.S.C. 112, the Secretary of Homeland Security amends 6 CFR part 21 and 44 CFR part 7, as follows:

Title 6—Domestic Security

PART 21—NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, OR NATIONAL ORIGIN IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM THE DEPARTMENT OF HOMELAND SECURITY

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

Authority: 5 U.S.C. 301; 6 U.S.C. 112; 42 U.S.C. 2000d-2000d-7.

2. In § 21.5:

- a. Remove and reserve paragraph (b)(2);
- b. In paragraph (b)(3), remove the words “or effect” wherever they appear;
- c. Remove paragraph (b)(6); and
- d. Revise paragraph (c).

The revision reads as follows:

§ 21.5 Discrimination prohibited.

* * * * *

(c) *Employment practices.* Whenever a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient of such assistance may not (directly or through contractual or other arrangements) subject any individual to discrimination on the ground of race, color, or national origin in its employment practices under such 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). That prohibition also applies to programs as to which a primary objective of

the Federal financial assistance is to assist individuals, through employment, to meet expenses incident to the commencement or continuation of their education or training, or to provide work experience which contributes to the education or training of the individuals involved. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to part III of Executive Order 11246 or any Executive Order which supersedes it.

* * * * *

Title 44—Emergency Management and Assistance

PART 7—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS (FEMA REG. 5)

3. The authority citation for part 7 is revised to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C. 112; 42 U.S.C. 2000d-2000d-7.

§ 7.5 [Amended]

4. In § 7.5, remove and reserve paragraph (b).

Markwayne Mullin,

Secretary,

Department of Homeland Security.