NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1250

[NASA Document Number: NASA-26-029]

RIN 2700-AE89

Nondiscrimination in Federally Assisted Programs of NASA – Effectuation of Title VI of the Civil Rights Act of 1964

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending its regulation implementing Title VI of the Civil Rights Act of 1964 (Title VI) for federally assisted programs to conform more closely to the statutory text and recent revisions by the Department of Justice (DOJ). This action removes provisions establishing disparate-impact liability. The rule also clarifies that Title VI reaches employment practices under this part only where employment is a primary objective of the Federal financial assistance or where intentional discrimination is shown. These changes align NASA's regulation with Title VI and promote consistency across Federal agencies.

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

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SUPPLEMENTARY INFORMATION:

I. Executive Summary

NASA is rescinding portions of its regulations promulgated pursuant to Title VI, 42 U.S.C. 2000d-1, to more closely align them to the statute, which prohibits intentionally discriminatory conduct, *see* 42 U.S.C. 2000d. There are serious statutory and constitutional concerns with NASA's current Title VI regulations because the current regulations go beyond

intentional discrimination by prohibiting conduct that has an unintentional disparate impact. This rule accordingly rescinds those portions of the regulations, which are in considerable tension with both the statute and the Constitution and do not sufficiently serve the public interest.

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

This rule makes clear to NASA's Federal-funding recipients that its Title VI regulations prohibit only intentional discrimination, and NASA thus will not pursue disparate-impact liability against its Federal-funding recipients.

II. Discussion

A. Statutory History of Title VI

Title VI, 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 provide any Federal department or agency with authority to prohibit conduct having an unintentional disparate impact. And despite having

ample opportunities, Congress has enacted no subsequent amendments to Title VI to impose disparate-impact liability.

B. Relevant Supreme Court Decisions

The Supreme Court has held that Title VI, 42 U.S.C. 2000d, does not prohibit facially neutral policies that result in disparate outcomes when there is no discriminatory intent. Rather, it prohibits only intentional discrimination. In 1978, the Supreme Court held that Congress intended Title VI to prohibit "only those racial classifications that would violate the Equal Protection Clause" if committed by a government actor. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 287 (1978) (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 DOJ's then-existing "disparate-impact regulations." *Id.* at 285–87. Although the Supreme Court had previously found a private cause of action to enforce Title VI's bar on intentional discrimination, *id.* at 279–80, that conclusion did not extend to enforcing DOJ's "disparate-impact regulations." *Id.* at 285. As the Supreme Court explained, it

is "clear" that "the disparate-impact regulations do not simply apply" the statutory prohibition, as the regulations "forbid conduct that [Title VI] permits," so it is equally "clear that the private right of action to enforce [Title VI] does not include a private right to enforce these regulations." *Id.* And although the Supreme Court in *Sandoval* "assume[d]," without deciding, that DOJ's disparate-impact regulations were valid, the Court explained that the then-current version of 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 doing so, the Supreme Court made clear that "statutes . . . have a single, best meaning" that is "'fixed at the time of enactment.'" *Id.* at 400 (quoting *Wis. Cent. Ltd. v. United States*, 585 U.S. 274, 284 (2018)). Thus, Title VI's 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 restates the "bedrock principle of the United States . . . that all citizens are treated equally under the law." 90 FR at 17537. The Order explains that this "principle guarantees equality of opportunity, not equal outcomes," and "promises that people are treated as individuals, not components of a particular race or group." *Id.*

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

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

In any event, NASA would have independently initiated steps toward making these changes regardless of Executive Order 14281. Even if Executive Order 14281 did not exist, in other words, NASA would have taken steps to adopt the policy to eliminate the use of disparate-impact liability under Title VI. The Order states, and NASA firmly agrees, that a "bedrock principle of the United States is that all citizens are treated equally under the law. This principle guarantees equality of opportunity, not equal outcomes. It promises that people are treated as individuals, not components of a particular race or group. It encourages meritocracy and a colorblind society," not race-, color-, or national-origin-based favoritism. 90 FR at 17537. And adherence to this principle, including in the issuance of grants, "is essential to creating opportunity, encouraging achievement, and sustaining the American Dream." *Id.*

Imposing disparate-impact liability endangers these policy objectives. Disparate-impact liability also raises serious constitutional concerns, is in considerable tension with 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, NASA concludes that these reasons support eliminating disparate-impact liability from NASA's Title VI

regulations. In any event, NASA concludes that each reason is an independent basis for eliminating disparate-impact liability from NASA's Title VI regulations.

D. Need for Rulemaking

14 CFR 1250.103, entitled "Discrimination prohibited," includes several provisions that go beyond Title VI and the Constitution by prohibiting conduct or activities causing unintentional disparate impact. And in some instances, these provisions may encourage or even require unlawful discrimination in the form of affirmative action. 14 CFR 1250.103-2(b) 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." Beyond that general prohibition, 14 CFR 1250.103-2(a)(3) addresses a Federal-funding recipient's selection of the site or location of facilities and includes two references to "effect" that extends to conduct with an unintentional disparate impact. 14 CFR 1250.103-2(e) addresses the use of affirmative action and provides that funding recipients may (and sometimes must) use race, color, or national origin to overcome unintentional disparate "consequences." 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. 14 CFR 1250.103-3(d) addresses prohibited discriminatory employment practices and extends beyond intentional discrimination to prohibiting conduct that "tends" to have a discriminatory effect. Finally, 14 CFR 1250.103-4(f)–(g) provide two illustrative applications of disparate-impact liability.

There are serious statutory and constitutional concerns with NASA's Title VI disparate-impact regulations. NASA 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 NASA's "disparate-impact regulations." *Sandoval*, 532 U.S. at 281–82, 284–85 (noting that DOJ's then-existing 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* applied to DOJ's Title VI regulations and resolved only the question of private enforceability, subsequent cases such as *Loper Bright* have made clear that NASA cannot extend Title VI beyond its best meaning. *See* 603 U.S. at 412–13 (holding that "courts must . . . ensur[e] that [an] agency acts within" its statutory authority). And even in the absence of Supreme Court precedent, NASA 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 prohibition of conduct having an unintentional disparate impact reaches a vastly broader scope than the statute itself. This scope is too broad to be considered a simple prophylactic measure aimed at preventing intentional discrimination. *See Sandoval*, 532 U.S. at 286 n.6 ("[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 NASA'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 NASA'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 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 NASA 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 consequences of" unintended racial disparities. 14 CFR 1250.103-2(e). Thus, for substantially the same reasons as above, the affirmative action provision raises serious constitutional concerns.

Finally, 14 CFR 1250.103-4(f)–(g) provide illustrative applications of disparate-impact liability. Because NASA is removing from its regulations the provisions establishing disparate-impact liability, the examples of disparate impact are no longer relevant.

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

NASA also has serious policy concerns with the imposition of disparate-impact liability. Although NASA 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 can lead 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 in the racial preference programs at issue were "themselves imprecise in many ways" and "the use of these opaque racial categories undermine[d], instead of promote[d], [their] goals"). This confusion undermines the law's ability to teach principles of nondiscrimination. *See e.g.*, 14 C.F.R. 1250.103-4(f)–(g) (providing illustrations of affirmative action in referrals and recruitment). NASA 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.

NASA 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 NASA has considered. And in any event, eliminating disparate-impact liability does not preclude the use of data on disparate outcomes to help prove intentional discrimination. This use of statistical disparity to help establish, as an evidentiary matter, liability for intentional discrimination materially differs from using it to impose liability for conduct having an unintentional disparate impact.

NASA has also considered the alternative of trying to adopt a modified version of disparate-impact liability, for example, by requiring covered entities to remedy so-called unintentional discrimination through a notice-and-remedy model. Such an approach might require a recipient to develop and implement a race-neutral corrective action plan when a compliance review reveals substantial disparities in access or benefits or require targeted, race-neutral barrier-removal measures if a periodic audit reveals statistically significant disparities of key program outcomes. But any version of imposing liability for so-called unintentional discrimination is inconsistent with Title VI's original public meaning. Regardless, even a modified version of disparate-impact liability would not eliminate NASA's serious legal and policy concerns. NASA determines that any benefits from adopting alternative versions of disparate-impact liability are outweighed by NASA'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. NASA 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.

NASA 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. At least since Sandoval, NASA's enforcement of its Title VI disparate-impact regulations has been minimal. 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 NASA's Title VI disparate-impact regulations. 90 FR at 17538. NASA accordingly believes that any reliance interests should be minimal and do not outweigh NASA's legal and other policy concerns. Further, each of NASA's concerns, whether considered cumulatively or separately, outweighs any reliance interests.

NASA 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 NASA 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, NASA finds that, regardless of the legality of NASA's disparate-impact regulations, the above summarized policy concerns, when viewed separately or cumulatively, independently justify the repeal of its disparate-impact regulations.

III. Regulatory Amendments

A. Comparison of Amendments

The left column lists the DOJ's Title VI final rule conforming amendments, and the right column shows the NASA regulatory text to remove.

Section **(DOJ 28 CFR 42.104)**	**Remove** **(NASA 14 CFR part 1250)**
(b)(2) – Disparate impact "criteria or methods of administration"	**1250.103-2(b)** – Delete full text of paragraph: "A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the

	class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin."
(b)(3) – Facility site selection ("purpose vs. effect")	**1250.103-2(a)(3)** – Delete the phrase **"or effect"** in both places within the section. Current text includes: "…may not make selections with the purpose **or effect** of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose **or effect** of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation."
(b)(6) – "Affirmative action" / mandatory remedial steps	**1250.103-2(e)** – Delete full text of paragraphs mandating affirmative steps to overcome past discrimination or requiring service to underrepresented groups.
(c)(2) – Employment practices (disparate impact reach)	**1250.103-3(d) –** Delete full text of paragraph that extends Title VI to disparate impact in programs the primary purpose of which is not employment: "Where a primary objective of the Federal financial

	assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of paragraph (a) of this section shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries."

Additionally, NASA is making further changes. First, NASA is replacing the defined term "Applicable" with "Applicant" within section 1250.102(b). Additionally, NASA is deleting 14 CFR 1250.103-4(f)–(g) in their entirety. Finally, NASA is removing 14 CFR 1250.112.

B. Section-By-Section Analysis

14 CFR 1250.102(b)

14 CFR 1250.102(b) contains a typo regarding the term "Applicant," which this rule corrects.

14 CFR 1250.103-2(b)

14 C.F.R.1250.103-2(b) is the general prohibition of conduct having an unintentional disparate impact. It imposes liability on Federal-funding recipients who "utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination." Because 14 CFR 1250.103-2(b)'s purpose is to prohibit unintentional disparate-impact discrimination, this rule deletes this subsection in its entirety. It thus amends the regulations to conform to Title VI and to address the considerations and determinations described in this

document. The rule replaces subsection (b) with a placeholder to maintain the numbering accuracy of previous citations and other references to parts of this section.

14 CFR 1250.103-2(a)(3)

14 CFR 1250.103-2(a)(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 NASA's implementing regulations. The paragraph's two references to "effect" extend its scope to unintentional disparate impacts. This rule deletes both "or effect" references to conform paragraph (a)(3) more closely to Title VI and to address the legal and policy considerations and determinations described in this document.

14 CFR 1250.103-2(e)

14 CFR 1250.103-2(e) deals with affirmative action. The second sentence—beginning with "This regulation does not prohibit the consideration of race, color, or national origin"—authorizes affirmative action even in the absence of a finding of prior discrimination in a program "to remove or over the consequences of practices or impediments of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin." This provision points not to intentional discrimination, but rather to the unintentional "consequences of practices or impediments." 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.

The third sentence of 14 CFR 1250.103-2(e) provides that "[w]here previous discriminatory practices or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to

discrimination under any program or activity to which this regulation applies the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purpose of the Act." This provision goes beyond the Equal Protection Clause, which permits, but does not mandate, a government to take narrowly tailored action to remedy the effects of its identified past discrimination. *See, e.g.*, *Bakke*, 438 U.S. at 307 (Powell, J.). Moreover, even putting aside the mandatory language, this provision does not expressly require narrow tailoring to counter particular past discrimination, but rather simply "an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice." 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 racial preferences when the recipient may not want to. This is contrary to NASA'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 (e).

14 CFR 1250.103-3(d)

14 CFR 1250.103-3 addresses prohibited discriminatory employment practices. 14 CFR 1250.103-3(a) prohibits intentionally discriminatory employment practices in a program when a primary objective of the Federal financial assistance that program receives is to provide employment. 14 CFR 1250.103-3(d) extends the prohibition on discrimination to employment practices of the funding recipient even when the financial assistance "is not to provide employment" if discrimination in the non-funded "employment practices . . . tends, on the ground of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of, or to subject them to discrimination under the program receiving Federal financial assistance." This section prohibits not only intentional discrimination but also conduct that "tends" to have a discriminatory effect.

Moreover, NASA notes that the extension to employment practices where the Federal funding's primary objective is not to provide employment conflicts with 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 14 CFR 1250.103-3(d) 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.

Section 14 CFR 1250.103-4(f)–(g)

Additionally, 14 CFR 1250.103-4(f)–(g) provide illustrative applications of disparate-impact liability. Because NASA is removing from its regulations the provisions establishing disparate-impact liability, these examples are no longer relevant.

Section 14 CFR 1250.112

Finally, NASA is removing 14 CFR 1250.112 because the provision is unnecessary to effectuate 42 U.S.C. 2000d–1. No specific statutory provision mandates or necessitates a regulation governing the internal coordination and relationships of agency officials. 42 U.S.C. § 2000d–1 directs the agency to issue rules to effectuate the nondiscrimination requirements applicable to external recipients of Federal funds. Although internal coordination is a necessary component of agency operations, a formal regulation is not required to effectuate external enforcement; such matters can be handled through internal agency management directives. Removing this section ensures that NASA's Title VI regulations remain fully aligned with the agency's commitment to modernize its regulations by rescinding outdated provisions and text that lacks a statutory basis.

IV. Severability

NASA's position is that each of the amendments described by this rule serves a vital, related, but distinct purpose. NASA 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. NASA would adopt any of the amendments independently of the invalidity of a separate amendment.

V. Legal Authority

This rule is issued under section 602 of Title VI,42 U.S.C. 2000d–1, and the laws listed in appendix A to part 1250.

VI. Regulatory Certifications

Administrative Procedure Act.

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

Title VI concerns non-discrimination conditions on the receipt of Federal financial assistance, and more particularly to the receipt of Federal "[g]rants and loans," "property," "personnel" and "[a]ny Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance." 14 CFR 1250.102(d); *see also* 14 CFR 1250.104 (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 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 guidance issued by the Office for Management and Budget (OMB) under 2 CFR 200.1, which defines "Federal financial assistance" with the same categories as the Administrative Procedure Act's exception for rules "relating to agency management or personnel or to public property, loans, grants, benefits, or contracts," 5 U.S.C. 553(a)(2). With potentially limited exceptions not applicable to NASA, all the forms of Federal financial assistance set forth under 2 CFR 200.1 that NASA administers would fall under the "public property, loans, grants, benefits, or contracts" exception. Thus, NASA issues this final rule without prior public notice and comment or a delayed effective date under 5 U.S.C. 553(a)(2).

Executive Order 12866 and **Executive Order 13563 (Regulatory Review).**

NASA has consulted the Office of Information and Regulatory Affairs (OIRA) pursuant to section 3(f) of Executive Order 12866, *Regulatory Planning and Review*, 58 FR 51735, 51738 (Sep. 30, 1993). Because this rule makes conforming edits, aligns with DOJ's Title VI revisions, and imposes no new requirements, this final rule is a significant regulatory action.

This regulation has been drafted and reviewed in accordance with Executive Order 13563 section 1(b), *Improving Regulation and Regulatory Review*, 76 FR 3821, 3821 (Jan. 18, 2011), which supplements and reaffirms the principles of Executive Order 12866. Executive Orders

12866 and 13563 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.*

As explained in the preamble, the regulatory modifications this rule makes are necessary to conform NASA regulations to Executive Order 14281, address serious legal concerns regarding NASA's Title VI regulation based on the Supreme Court's reading of Title VIin *Sandoval*, harmonize the implementing regulation with Title VI, promote consistency in enforcement among private plaintiffs and Federal departments and agencies, and provide much needed clarity to courts and Federal-funding recipients and beneficiaries regarding the scope of NASA's Title VI regulations.

Data limitations make the costs and benefits of the rule difficult to quantify. Although it does not represent the monetary impact of the rule, NASA issued approximately 8,202 separate awards totaling approximately $6 billion over the past 5 years. NASA 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, NASA does not track and cannot reliably quantify the costs attributable to the disparate-impact portions of enforcement actions. That the existence of a disparate impact is a factor that may be considered in evaluating intentional discrimination further impedes monetizing costs and benefits. Therefore, the overall cost effect on NASA is difficult to quantify. The deregulatory action should decrease NASA's enforcement costs, however. It should also have the benefit, albeit difficult to quantify, of bringing NASA's conduct in line with the law. Similarly, NASA 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.

NASA recognizes that a funding recipient may receive Federal funds from sources other than NASA. 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, 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.*, 14 CFR 1250.104. These contractual assurances 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. And in any event, NASA notes that other agencies are currently amending their regulations to align with the changes made in this rule, so NASA anticipates that there will be little, if any, disparity in federal requirements regarding disparate-impact liability going forward.

Based on the analysis of the practical qualitative costs and benefits noted above, NASA 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, NASA 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, 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 NASA's current Title VI regulations, which extend prohibited conduct to include unintentional disparate impacts and thus expand the scope of those regulations to a vastly broader range of conduct than the statute prohibits. Accordingly, NASA considers this rule to be a deregulatory action under Executive Order 14192.

Executive Order 14294 (Fighting Overcriminalization in Federal Regulations).

NASA has reviewed this rule under Executive Order 14294 and determined that it does not create or modify any criminal regulatory provisions; accordingly, Executive Order 14294 does not apply.

Executive Order 13132 (Federalism).

NASA analyzed this rule under Executive Order 13132 and determined it does not have federalism implications because it does not have substantial direct effects on the States, alter the relationship between the national government and the States, or affect the distribution of power and responsibilities among levels of government. Accordingly, no federalism summary impact statement is required.

Executive Order 12988 (Civil Justice Reform).

This final rule has been reviewed in accordance with Executive Order 12988. It meets applicable standards to minimize litigation, is written clearly, and has no retroactive effect.

Regulatory Flexibility Act.

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities because it removes provisions and clarifies the scope of existing requirements without adding new compliance obligations.

Unfunded Mandates Reform Act (UMRA).

This rule does not contain Federal mandates that may result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year; therefore, sections 202 and 205 of UMRA do not apply.

Congressional Review Act (CRA).

NASA will submit the rule and the required reports to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801. OIRA has determined that this final rule is not a "major rule" under 5 U.S.C. 804(2).

Paperwork Reduction Act.

This final rule contains no new or revised information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

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.

List of Subjects in 14 CFR Part 1250

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

For the reasons stated in the preamble, NASA amends 14 CFR part 1250 as follows:

PART 1250—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF NASA—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

1. The authority citation for part 1250 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252, 42 U.S.C. 2000d-1; and the laws listed in appendix A to this part.

§ 1250.102 [Amended]

2. In § 1250.102(b), remove the word "Applicable" and add in its place "Applicant."

§ 1250.103-2 [Amended]

3. In § 1250.103-2:

a. In paragraph (a)(3), remove the words “or effect” wherever they appear.

b. Remove paragraphs (b) and (e).

c. Redesignate paragraphs (c) and (d) as paragraphs (b) and (c).

§ 1250.103-3 [Amended]

4. In § 1250.103-3, remove paragraph (d).

§ 1250.103-4 [Amended]

5. In § 1250.103-4, remove paragraphs (f) and (g).

§ 1250.112 [Removed]

6. Remove § 1250.112.

Jamie Krauk,

Director,

Office of the Executive Secretariat (OES).

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