List of Subjects in 10 CFR Part 1003

Administrative practice and procedure, Appeal procedures, Hearing and appeal procedures.

Signing Authority

This document of the Department of Energy was signed on May 9, 2025, by Chris Wright, Secretary, U.S. Department of Energy. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 9, 2025.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons set forth in the preamble, DOE amends part 1003 of chapter X of title 10 of the Code of Federal Regulations, as set forth:

PART 1003—OFFICE OF HEARINGS AND APPEALS PROCEDURAL REGULATIONS

■ 1. The authority citation for part 1003 continues to read as follows:

Authority: 15 U.S.C. 761 *et seq.*;42 U.S.C. 7101 *et seq.*

§ 1003.13 [Removed and Reserved]

■ 2. Remove and reserve § 1003.13.

[FR Doc. 2025–08540 Filed 5–12–25; 9:30 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 1040

[DOE–HQ–2025–0024]

RIN 1903–AA20

Rescinding Regulations Related to Nondiscrimination in Federally Assisted Programs or Activities (General Provisions)

AGENCY: Office of Minority Economic Impact, Department of Energy (DOE).

ACTION: Direct final rule; request for comments.

SUMMARY: This direct final rule rescinds certain unnecessary regulatory provisions related to nondiscrimination in federally assisted programs or activities.

DATES: The direct final rule is effective July 15, 2025, unless significant adverse comments are received by June 16, 2025. Significant adverse comments are ones which oppose the rule and raise, alone or in combination, a serious enough issue related to each of the independent grounds for the rule that a substantive response is required. If significant adverse comments are received, notification will be published in the **Federal Register** before the effective date either withdrawing the rule or issuing a new direct final rule which responds to significant adverse comments.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov* under docket number DOE–HQ–2025–0024. Follow the instructions for submitting comments.

The docket for this direct final rule, which includes **Federal Register** notices, comments, and other supporting documents and materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *www.regulations.gov/docket/DOE-HQ-2025-0024.* The docket web page contains instructions on how to access all documents, including public comments, in the docket, as well as a summary of the rulemaking. In accordance with 5 U.S.C. 553(b)(4), a summary of this rule may be found at *regulations.gov,* under the docket number.

FOR FURTHER INFORMATION CONTACT: Mr. David Taggart, U.S. Department of Energy, Office of the General Counsel, GC–1, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–5281. Email: *DOEGeneralCounsel@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

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I. General Discussion

DOE is rescinding certain provisions from its regulations codified at part 1040 of chapter X of title 10 of the Code of Federal Regulations (CFR) (''Nondiscrimination in Federally Assisted Programs or Activities'') under subpart A—''General Provisions''; subpart B—''Title VI of the Civil Rights Act of 1964'' [1] (''title VI''); section 16 of the Federal Energy Administration Act of 1974, as Amended [2] (''section 16''); and section 401 of the Energy Reorganization Act of 1974 [3] (''section 401'')''; subpart D—''Nondiscrimination on the Basis of Handicap—Section 504 of the Rehabilitation Act of 1973, as amended'' [4] (''section 504''); subpart F—Nondiscrimination Under Title VIII of the Civil Rights Act of 1968, as Amended [Reserved] [5] (''title VIII'')''; and subpart G—Program Monitoring. DOE is rescinding twelve (12) provisions under these subparts as follows:

(1) a clause in subpart A at 10 CFR 1040.1 covering employment practices

(2) a clause in 10 CFR 1040.12 at subpart A, covering employment practices

(3) a clause in 10 CFR 1040.14 at subpart A, covering employment practices

(4) paragraph (c) of 10 CFR 1040.5 at subpart A, covering information in appropriate languages

(5) paragraph (c) of 10 CFR 1040.6 at subpart A, covering information in appropriate languages

(6) the entirety of 10 CFR 1040.8 at subpart A, covering the effect of employment opportunity

(7) paragraph (c) of 10 CFR 1040.13 at subpart B, covering the effect of criteria or methods

(8) paragraph (d) of 10 CFR 1040.13 at subpart B, covering the effect of facilities location

(9) paragraph (c) of 10 CFR 1040.72 at subpart D, covering a time period (now past)

(10) paragraph (d) of 10 CFR 1040.72 at subpart D, covering a transition plan (now obsolete)

[1] Public Law 88–352.
[2] Public Law 93–275.
[3] Public Law 93–438.
[4] Public Law 93–112.
[5] Public Law 90–284.

(11) the entirety of subpart F, reserved for a statute (title VIII) that is not enforced by DOE;

(12) paragraph (d) of 10 CFR 1040.102 at subpart G covering superfluous information

For the reasons explained further below, DOE is rescinding these provisions after determining that they are either outdated, raise serious constitutional difficulties, or are based on anything other than the best reading of the underlying statutory authority or prohibition.

Covered Employment Practices at 10 CFR 1040.1, 1040.12, and 1040.14

According to 10 CFR 10401.1 the purpose of part 1040 (Nondiscrimination in federally assisted programs or activities) is to implement a variety of civil rights and nondiscrimination laws. These laws ensure that no one may ''be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment, where a primary purpose of the Federal financial assistance is to provide employment or when the delivery of services is affected by the recipient's employment practices (under section 504, all grantee and subgrantee employment practices are covered regardless of the purpose of the program), in connection with any program or activity receiving Federal financial assistance from [DOE].'' 10 CFR 10401.1.

This employment coverage also extends to subpart B of 10 CFR part 1040 implementing title VI, section 16, and section 401. Specifically, the subpart B definitions at 10 CFR 1040.12(a)(1) state that covered employment practices not only include those which exist in programs where a primary objective of the Federal financial assistance is to provide employment, but also to practices which ''(ii) Cause discrimination on the basis of race, color, or national origin with respect to beneficiaries or potential beneficiaries of the assisted program.'' Furthermore, under 10 CFR 1040.12(a)(2), ''[a]ll employment practices of a recipient or subrecipient of Federal financial assistance subject to section 16 and section 401 are covered employment practices.'' Additionally, 10 CFR 1040.14(a)(2) states that, ''[i]n regard to Federal financial assistance which does not have the provision of employment as a primary objective, the provisions of paragraph (a)(1) of this section (enumerating prohibited employment discrimination) apply to the employment practices of the recipient if discrimination on the ground of race, color, national origin, or sex (when covered by section 16 or section 401) in such employment practices tends to exclude persons from participation in, deny them the benefits of, or subject them to discrimination under the program receiving Federal financial assistance.''

DOE has determined that the expansive coverage of employment by these clauses as applied to title VI (and through incorporation by reference, section 16, and section 401 [6]) find no support in the statute itself. Rather, section 2000d–3 of title VI expressly provides that: ''Nothing contained in this subchapter shall be construed to authorize action under this subchapter 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.'' [7] As the U.S. Supreme Court explains, ''Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose.'' [8] ''Where . . . that examination yields a clear answer, [we] must stop.'' [9] In acknowledgement of this judicial precedent, and the express statutory language of title VI, DOE's direct final rule rescinds the following:

(1) The clause in 10 CFR 1040.1(a) stating, ''or when the delivery of services is affected by the recipient's employment practices.'' Importantly, the rescission of this clause in no way disturbs the following clauses stating that, ''under section 504, all grantee and subgrantee employment practices are covered regardless of the purpose of the program'' and, ''Employment coverage may be broader in scope when section 16, section 401, or Title IX are applicable.'' As to these undisturbed clauses, it is further noted that the employment practices covered by DOE's section 504 regulations at subpart D are not affected by this direct final rule. Additionally, the remedies available under section 16 and section 401 are not exclusive to subpart B of 10 CFR part 1040, and thus, do not prejudice any other legal remedies available to any persons alleging sex discrimination in a programs authorized by the Federal Energy Administration Act or the Federal Energy Organization Act that are not covered by 10 CFR part 1040. Finally, the coverage of employment under title IX, which is enforced by DOE regulations at 10 CFR part 1042, is not affected by this direct final rule.

(2) The portion of the definition in 10 CFR 1040.12(a) regarding covered employment practices under title VI, section 16, and section 401, stating—''or . . . (ii) Cause discrimination on the basis of race, color, or national origin with respect to beneficiaries or potential beneficiaries of the assisted program''; and the definition stating 10 CFR 1040.12(a)(2) that—''All employment practices of a recipient or subrecipient of Federal financial assistance subject to section 16 and section 401 are covered employment practices.''

(3) 10 CFR 1040.14(a)(2), stating—''In regard to Federal financial assistance which does not have provision of employment as a primary objective, the provisions of paragraph (a)(1) of this section apply to the employment practices of the recipient if discrimination on the ground of race, color, national origin, or sex (when covered by section 16 or section 401) in such employment practices tends to exclude persons from participation in, deny them the benefits of, or subject them to discrimination under the program receiving Federal financial assistance. In any such case, the provisions of paragraph (a)(1) of this section apply to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.''

Information in Appropriate Languages Under 10 CFR 1040.5(c) and 1040.6(c)

The DOE regulation at 10 CFR 1040.5(c) provides that: ''Where a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program or activity requires service or information in a language other than English in order to be informed of or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and size and concentration of such population, to provide information in appropriate languages (including braille) to such

[6] Both section 16 and section 401 expressly provide that each section ''will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under Title VI of the Civil Rights Act of 1964.''

[7] *See* section 2000d–3—Construction of provisions not to authorize administrative action with respect to employment practices except where primary objective of Federal financial assistance is to provide employment. Public Law 88–352, Title VI, section 604, July 2, 1964, 78 Stat. 253.

[8] *See Gross* v. *FBL Financial Services, Inc.,* 557 U.S. 167, 175, 129 S. Ct. 2343, 2350, 174 L. Ed. 2d 119 (2009); *see also Schindler Elevator Corp.* v. *United States ex rel. Kirk,* 563 U.S. 401, 407, 131 S. Ct. 1885, 179 L.Ed.2d 825 (2011).

[9] *Food Mktg. Inst.* v. *Argus Leader Media,* 588 U.S. 427, 436, 139 S. Ct. 2356, 2364, 204 L. Ed. 2d 742 (2019).

persons. This requirement applies to written material of the type which is ordinarily distributed to the public. The Department may require a recipient to take additional steps to carry out the intent of this subsection.'' The Notice requirements of 10 CFR 1040.6 further state at paragraph (c) that: ''The provisions of § 1040.5(c) to provide information in appropriate languages (including braille), apply to this section.''

DOE has determined that the requirements imposed by 10 CFR 1040.5(c) and 1040.6(c) are not based on the best reading of the underlying statutory authority or prohibition. Rather, those requirements promote the policy goals of revoked Executive Order (E.O.) 13166, *Improving Access to Services for Persons with Limited English Proficiency* (LEP).[10]

Notwithstanding the fact that E.O. 13166 sought ''to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP),'' title VI must be enforced consistent with the Fourteenth Amendment to the U.S. Constitution.[11] Consequently, while title VI authorizes and directs agencies to issue rules, regulations, and orders of general applicability that prohibit intentional discrimination,[12] it does not authorize an agency to dictate that a recipient provide services or information in languages other than English.

Consistent with its statutory authority, DOE is rescinding 10 CFR 1040.5(c) and 1040.6(c). Importantly, the rescission of these provisions in no way eliminates or alters the right of any federally assisted program applicant, participant, other eligible beneficiary, or validly covered employee, to be free of intentional discrimination *because of* national origin, as that has always been prohibited by title VI and the statutorily authorized and valid sections of 10 CFR part 1040. The rescission of these provisions also does not affect the prohibitions on disability discrimination under subpart D implementing section 504.

Effect of Employment Opportunity Under 10 CFR 1040.8

According to 10 CFR 1040.8, ''due to limited opportunities in the past, certain protected groups may be underrepresented in some occupations or professions.'' Based on that stated presumption, this provision further asserts that ''a recipient's obligation to comply with this part is not alleviated by use of statistical information which reflects limited opportunities in these occupations or professions.''

DOE has determined that 10 CFR 1040.8 suffers from fatal constitutional infirmities. Despite the provision's presumption, the effects of past societal discrimination are not a sufficiently compelling justification for racial classifications by or for any level of government.[13] Furthermore, absent a specific, identified, instance of intentional discrimination, statistical information indicating that certain protected groups are underrepresented in some occupations or professions does not obligate any FFA recipient to take remedial *or* affirmative action under this part. To the contrary, any affirmative action for which ''measures of success'' depend on ''whether some proportional goal has been reached'' amounts to ''outright racial balancing'' which is ''patently unconstitutional.'' [14] For these reasons, DOE is rescinding 10 CFR 1040.8 in its entirety.

Prohibited Effects Under 10 CFR 1040.13(c) and (d)

According to 10 CFR 1040.13(c), ''A recipient . . . 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, national origin, or sex . . . or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, national origin, or sex . . . .''

According to 10 CFR 1040.13(d), ''In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination because of race, color, national origin, or sex . . . or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of title VI or this subpart.''

DOE has determined that the ''effect'' language of 10 CFR 1040.13(c) and (d) raises serious constitutional difficulties and is not based on the best reading of title VI. In fact, unlike the results-oriented terms in other statutes, the express statutory language of title VI only prohibits intentional discrimination.[15] It contains no such clause prohibiting ''effects'' (commonly known as disparate impact). Rather, the words ''have the effect of'' were embedded in the title VI regulations by the Department of Justice decades ago, to reflect agency policy preferences. Most recently, a solid majority of the U.S. Supreme Court Justices reaffirmed that the equal protection principles of the Constitution, which extend to title VI, do not permit the elimination of society's racial disparities through race-based means.[16] Furthermore, even as far back as the case of *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.,*[17] the Supreme Court explained that official action will not be held unconstitutional solely because it results in a racially disproportionate impact. ''Such impact is not irrelevant. . . but it is not the sole touchstone of invidious racial discrimination.'' Rather, ''Determining whether [an] invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.'' [18]

DOE's rescission of the ''effect'' language in 10 CFR 1040.13(c) and (d) aligns with the evidentiary approach set forth by the Supreme Court in *Arlington Heights,* and the express statutory authority of title VI, interpreted coextensively with the Constitution's guarantee of equal protection. Thus, no FFA recipient will be held liable by

[10] 65 FR 50121 (August 16, 2000).

[11] *See Regents of University of California* v. *Bakke,* 438 U.S. 265, 285 (1978); *see also Students for Fair Admissions, Inc.* v. *President and Fellows of Harvard College* and *Students for Fair Admissions, Inc.* v. *University of North Carolina, et al,* 143 S. Ct. 2141 (2023).

[12] Public Law 88–352, title VI, section 601, July 2, 1964, 78 Stat. 252. To effectuate the purpose of section 601, section 602 of title VI specifically states that—''Each Federal Department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or [contract of] guaranty, is authorized and directed to effectuate the provisions of [§ 601 of this Title] with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken.''

[13] *See Students For Fair Admissions, Inc.* v. *President and Fellows of Harvard College* and *University of North Carolina, et al.,* 143 S. Ct. 2141 (2023). *See also Adarand Constructors, Inc.* v. *Peña,* 515 U.S. 200, 217 (1995) (''the equal protection obligations imposed by the Fifth and the Fourteenth Amendments [are] indistinguishable,'' so that ''the standards for federal and state racial classifications [are] the same'').

[14] *Students For Fair Admissions, Inc.* v. *President and Fellows of Harvard College* and *University of North Carolina, et al.,* 143 S. Ct. 2141 (2023).

[15] Public Law 88–352, title VI, section 601, July 2, 1964, 78 Stat. 252.

[16] *See Students For Fair Admissions, Inc.* v. *President and Fellows of Harvard College* and *University of North Carolina, et al.,* 143 S. Ct. 2141 (2023).

[17] 429 U.S. 252 (1977).

[18] Powell, J. quoting *Washington* v. *Davis,* 426 U.S. 229, 242, 96 S. Ct. 2040, 2049, 48 L.Ed.2d 597.

DOE under 10 CFR part 1040 for disparate impacts it did not intentionally cause. However, where DOE ''smokes out'' [19] a recipient policy masking intentional discrimination, the recipient will be required to take any and all remedial action necessary to overcome the harms of that discrimination. Such remedy shall concentrate on the elimination of the offending practice, consistent with the U.S. Constitution. For these reasons, DOE's direct final rule rescinds the following:

(1) The clause in 10 CFR 1040.13(c) prohibiting recipients from utilizing criteria or methods of administration that ''have the effect of subjecting individuals to discrimination. . . .'' This clause will be replaced and instead prohibit recipients from utilizing ''criteria or methods of administration which intentionally subject individuals to discrimination.''

(2) The clauses in 10 CFR 1040.13(d) prohibiting recipients from making ''selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination because of race, color, national origin, or sex'' and from determining a site or location of facilities with the ''purpose or effect of defeating or substantially impairing the accomplishment of the objectives of title VI or this subpart.'' These clauses will be replaced and instead prohibit recipients from making ''selections with the *intent* of excluding individuals from, denying them the benefits of, or subjecting them to discrimination because of race, color, national origin, or sex'' and from determining a site or location of facilities with the ''*intent* of defeating or substantially impairing the accomplishment of the objectives of title VI or this subpart.''

Time Period and Transition Plan Under 10 CFR 1040.72(c) and (d)

The DOE regulations implementing section 504 provide a time period and transition plan for recipient compliance with section 504 accessibility standards applicable to existing facilities. Specifically, 10 CFR 1040.72(c) provides that ''A recipient shall comply with the requirement of paragraph (a) of this section within 60 days of the effective date of this subpart except that where structural changes in facilities are necessary, the changes are to be made as expeditiously as possible, but in no event later than three years after the effective date of this subpart.'' Paragraph (d) of § 1040.72 further provides that ''In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within 6 months of the effective date of this subpart, a transition plan setting forth the steps necessary to complete the changes.''

In light of the fact that over two decades have passed since the effective date of subpart D of 10 CFR part 1040 implementing section 504, DOE has determined that 10 CFR 1040.72(c) and (d) are obsolete and outdated. DOE's direct final rule thus rescinds each of these provisions in their entirety.

Implementation of Title VIII Regulations Under Subpart F

When DOE first promulgated 10 CFR part 1040, it reserved subpart F for regulations that would implement title VIII of the Civil Rights Act of 1968 (known as the Fair Housing Act or FHA). Although DOE never issued FHA regulations under subpart F, in the intervening years the U.S. Department of Housing and Urban Development (HUD) was tasked with enforcing the FHA. DOE's direct final rule thus rescinds subpart F as the purpose for its reservation has been rendered obsolete. DOE will continue to refer any and all received complaints of housing discrimination to HUD pursuant to the FHA.

Information to Program Participants and Beneficiaries Under 10 CFR 1040.102(d)

Under 10 CFR 1040.102(d), ''Each recipient shall make available to participants, beneficiaries, and other interested persons information regarding the provisions of this section and its applicability to the program under which the recipient receives Federal financial assistance. Information is to be made available to beneficiaries, participants, and other interested persons in a manner which the responsible Department officials find necessary to inform such persons of the protections against discrimination assured them by this part and the statutes to which this part applies.''

DOE's direct final rule rescinds 10 CFR 1040.102(d) for the following reasons. DOE has determined that this paragraph is superfluous because other provisions of 10 CFR part 1040 include similar or sizably more requirements. Specifically, 10 CFR 1040.6(a) requires that every recipient ''take appropriate, initial and continuing steps to notify participants, beneficiaries, applicants and employees, including those with impaired vision or hearing, and unions or professional organizations . . . that it does not discriminate on the basis of race, color, national origin, sex, disability, or age. The notification is to include an identification of the responsible employee designated under 10 CFR 1040.5.'' Additionally, 10 CFR 1040.6(b) requires a recipient that publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees to also include the notice described in 10 CFR 1040.6(a). Another provision at 10 CFR 1040.5(b) states that every ''recipient shall display prominently, in reasonable numbers and places, posters which state that the recipient operates a program or activity subject to the nondiscrimination provisions of applicable subparts, summarize those requirements, note availability of information regarding this part from the recipient and DOE, and explain briefly the procedures for filing a complaint. Information on requirements of this part, complaint procedures and the rights of beneficiaries are to be included in handbooks, manuals, pamphlets, and other materials which are ordinarily distributed to the public to describe the federally assisted programs or activities and the requirements for participation by recipients and beneficiaries. To the extent that recipients are required by law or regulation to publish or broadcast information in the news media, the recipient shall insure that such publications and broadcasts state that the program or activity in question is an equal opportunity program or activity or otherwise indicate that discrimination in the program is prohibited by Federal law.''

II. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866

Executive Order (E.O.) 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that

[19] *See Ricci* v. *DeStefano,* 557 U.S. 557, 595 (2009) (Scalia, J., concurring).

maximize net benefits; (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

For the reasons stated in the preamble, this direct final rule is consistent with these principles. Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to the Office of Information and Regulatory Affairs (OIRA) for review. OIRA has determined that this direct final rule does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this direct final rule was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*www.energy.gov/gc/office-general-counsel*).

DOE reviewed this rescission under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. This final rule eliminates unnecessary regulations. Therefore, DOE initially concludes that the impacts of the rescission would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of an IRFA is not warranted. DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

This rescission imposes no new information or recordkeeping requirements. Accordingly, Office of Management and Budget (OMB) clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act of 1969

DOE has analyzed this action in accordance with the National Environmental Policy Act of 1969, as amended (''NEPA''), and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for rulemakings that are strictly procedural. *See* 10 CFR part 1021, subpart D, appendix A6. DOE has determined that this rulemaking qualifies for categorical exclusion A6 because it is a strictly procedural rulemaking.

E. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735.

DOE has examined this rescission and has tentatively determined that it would not have a substantial direct effect 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.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General.

Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rescission meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. 2 U.S.C. 1532(a), (b). The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy

statement is also available at *www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

DOE examined this rescission according to UMRA and its statement of policy and determined that the rescission does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of UMRA do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rescission would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), DOE has determined that this rescission would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at: *https://www.energy.gov/cio/department-energy-information-quality-guidelines.* DOE has reviewed this rescission under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

L. Review Under Additional Executive Orders and Presidential Memoranda

DOE has examined this rescission and has tentatively determined that it is consistent with the policies and directives outlined in E.O. 14192. This rescission is expected to be an Executive Order 14192 deregulatory action.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

III. Approval of the Secretary

The Secretary of Energy has approved publication of this direct final rule; request for comment.

List of Subjects in 10 CFR Part 1040

Aged, Civil rights, Equal employment opportunity, Individuals with disabilities, Sex discrimination.

Signing Authority

This document of the Department of Energy was signed on May 9, 2025, by Chris Wright, Secretary, Department of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 9, 2025.

Jennifer Hartzell,

Alternate Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons set forth in the preamble, DOE amends part 1040 of chapter X of title 10 of the Code of Federal Regulations, as set forth below:

PART 1040—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES

■ 1. The authority citation for part 1040 continues to read as follows:

Authority: 20 U.S.C. 1681–1686; 29 U.S.C. 794; 42 U.S.C. 2000d to 2000d–7, 3601–3631, 5891, 6101–6107, 7101 *et seq.*

■ 2. Amend § 1040.1 by revising paragraph (a) to read as follows:

§ 1040.1 Purpose.

(a) The purpose of this part is to implement title VI of the Civil Rights Act of 1964, Public Law 88–352; section 16 of the Federal Energy Administration Act of 1974, as amended, Public Law 93–275; section 401 of the Energy Reorganization Act of 1974, Public Law 93–438; title IX of the Education Amendments of 1972, as amended, Public Law 92–318, Public Law 93–568 and Public Law 94–482; section 504 of the Rehabilitation Act of 1973, as amended, Public Law 93–112; the Age Discrimination Act of 1975, Public Law 94–135; title VIII of the Civil Rights Act of 1968, Public Law 90–284; and civil rights provisions of statutes administered pursuant to authority under the DOE Organization Act, Public Law 95–91, so no person shall, on the ground of race, color, national origin, sex (when covered by section 16 and section 401), handicap, or age, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment, where a primary purpose of the Federal financial assistance is to provide employment (under section 504, all grantee and subgrantee employment practices are covered regardless of the purpose of the program), in connection with any program or activity receiving Federal financial assistance from the Department of Energy (after this referred to as DOE or the Department). Employment coverage may be broader in scope when section 16, section 401, or title IX are applicable.

* * * * *

■ 3. Amend § 1040.12 by revising paragraph (a) to read as follows:

§ 1040.12 Definitions.

(a) *Covered employment* means employment practices covered by title VI, section 16 and section 401.

(1) Under title VI, such practices are those which, exist in a program where a primary objective of the Federal financial assistance is to provide employment; or

(2) Under section 16 and section 401, such practices include, but are not limited to, employment practices covered by title VI when alleging discrimination on the basis of sex.

* * * * *

§ 1040.5 [Amended]

■ 4. Amend § 1040.5 by removing and reserving paragraph (c).

§ 1040.6 [Amended]

■ 5. Amend § 1040.6 by removing and reserving paragraph (c).

§ 1040.8 [Removed and Reserved]

■ 6. Remove and reserve § 1040.8.

■ 7. Amend § 1040.13 by revising paragraphs (c) and (d) to read as follows:

§ 1040.13 Discrimination prohibited.

* * * * *

(c) *Type of Federal financial assistance.* A recipient, in determining the type of Federal financial assistance (*i.e.,* disposition, services, financial aid, benefits, or facilities) which will be provided under any program, or the class of individuals to whom, or the situations in which the assistance will be provided, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which intentionally subject individuals to discrimination because of their race, color, national origin, or sex (when covered by section 16 and section 401) or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, national origin, or sex (when covered by section 16 or section 401).

(d) *Site or location of facilities.* In determining the site or location of facilities, a recipient or applicant may not make selections with the intent of excluding individuals from, denying them the benefits of, or subjecting them to discrimination because of race, color, national origin, or sex (when covered by section 16 or 401) or with the intent of defeating or substantially impairing the accomplishment of the objectives of title VI or this subpart.

* * * * *

§ 1040.14 [Amended]

■ 8. Amend § 1040.14 by removing and reserving paragraph (a)(2).

§ 1040.72 [Amended]

■ 9. Amend § 1040.72 by removing and reserving paragraphs (c) and (d).

Subpart F [Removed]

■ 10. Remove subpart F.

Subparts G and H [Redesignated as Subparts F and G]

■ 11. Redesignate subparts G and H as subparts F and G.

§ 1040.102 [Amended]

■ 12. Amend § 1040.102 by removing and reserving paragraph (d).

[FR Doc. 2025–08593 Filed 5–12–25; 9:30 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 1040

[DOE–HQ–2025–0015]

RIN 1903–AA24

Rescinding New Construction Requirements Related to Nondiscrimination in Federally Assisted Programs or Activities

AGENCY: Office of Civil Rights and EEO, Department of Energy (DOE).

ACTION: Direct final rule (DFR); request for comments.

SUMMARY: This DFR rescinds certain new construction requirements related to disability nondiscrimination in federally assisted programs or activities.

DATES: The final rule is effective July 15, 2025, unless significant adverse comments are received by June 16, 2025. Significant adverse comments are ones which oppose the rule and raise, alone or in combination, a serious enough issue related to each of the independent grounds for the rule that a substantive response is required. If significant adverse comments are received, notification will be published in the **Federal Register** before the effective date either withdrawing the rule or issuing a new final rule which responds to significant adverse comments.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov* under docket number DOE–HQ–2025–0015. Follow the instructions for submitting comments. The docket for this final rule, which includes **Federal Register** notices, comments, and other supporting documents and materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure. The docket web page can be found at *www.regulations.gov/docket/DOE-HQ-2025-0015.* The docket web page contains instructions on how to access all documents, including public comments, in the docket, as well as a summary.

In accordance with 5 U.S.C. 553(b)(4), a summary of this rule may be found at *regulations.gov,* under the docket number.

FOR FURTHER INFORMATION CONTACT: Mr. David Taggart, U.S. Department of Energy, Office of the General Counsel, GC–1, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–5281. Email: *DOEGeneralCounsel@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Discussion

Through this direct final rule, DOE is rescinding certain provisions from its regulations found at part 1040 of chapter X of title 10 of the Code of Federal Regulations (CFR) (''Nondiscrimination in Federally Assisted Programs or Activities''). Specifically, DOE is rescinding 10 CFR 1040.73, ''New Construction.'' Upon further evaluation, and for the reasons explained subsequently, DOE has determined this provision to be unnecessary and unduly burdensome.

Under 10 CFR 1040.73, each facility or part of a facility constructed by, on