## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### 45 CFR Part 84

## Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance; Clarification

**AGENCY:** U.S. Department of Health and Human Services.

**ACTION:** Clarification.

**SUMMARY:** The Department of Health and Human Services (HHS or the Department) is issuing this document to clarify the non-enforceability of certain language that was included in the preamble to—but not the regulatory text of—the May 9, 2024, final rule titled ''Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance.'' Language in the preamble concerning gender dysphoria, which language is not included in the regulatory text, does not have the force or effect of law. Therefore, it cannot be enforced.

**DATES:** April 11, 2025.

**FOR FURTHER INFORMATION CONTACT:** Sean R. Keveney, Acting General Counsel, 202–690–7741.

**SUPPLEMENTARY INFORMATION:** On May 9, 2024, HHS issued a final rule entitled ''Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance,'' 89 FR 40066 (''2024 Section 504 Rule''). A portion of the preamble of that rule addresses whether ''gender dysphoria can be a disability under section 504 [of the Rehabilitation Act of 1973] and the [American with Disabilities Act].'' *Id.* at 40068–69. This preamble language does not have the force or effect of law; it cannot be enforced.

The regulatory text in the final rule does not say that gender dysphoria is a disability, *see id.* at 40180–82 (revising 45 CFR 84.4, which defines ''disability''). The regulatory text incorporates and is consistent with the exclusions set forth in 29 U.S.C. 705(20)(F), which provides, inter alia, that '''an individual with a disability' does not include an individual on the basis of—. . . [ ] gender identity disorders not resulting from physical impairments, . . . .'' 45 CFR 84.4(g).

The Department is nonetheless concerned there has been significant confusion about the preamble language referencing gender dysphoria in the 2024 Section 504 Rule. It is well-established that where, as here, the language included in the regulatory text itself is clear, statements made in the preamble to a final rule published in the **Federal Register**, lack the force and effect of law and are not enforceable. *See Kisor* v. *Wilkie,* 588 U.S. 558, 621 (2019) (''[t]he text of the regulation *is* treated as the law, and the agency's policy judgment has the force of law *only* insofar as it is embodied in the regulatory text.'') (Gorsuch, J., concurring) (emphases in original); *see also Wyeth* v. *Levine,* 555 U.S. 555, 575 (2009) (language in preamble to regulation did not give rise to preemption: while ''an agency regulation with the force of law can pre-empt conflicting state requirements,'' ''[w]e are faced with no such regulation in this case . . . .''); *AT&T Corp.* v. *Fed. Commc'ns Comm'n,* 970 F.3d 344, 350 (D.C. Cir. 2020) ((holding that where ''the regulation itself is clear'' courts ''need not evaluate either the regulatory preamble or any other document that itself lacks the force and effect of law'' (quotation marks omitted)). Nevertheless, the Department out of an abundance of caution is issuing this notice to clarify and emphasize that such language is not, and never was, enforceable.

**Robert F. Kennedy, Jr.,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2025–06127 Filed 4–10–25; 8:45 am]

**BILLING CODE 4150–26–P**

## DEPARTMENT OF COMMERCE

### Office of the Secretary

### 48 CFR Part 1353

**[Docket No.: 250325–0051]**

**RIN 0605–AA69**

## Removal of Form CD 570 From the Commerce Acquisition Regulation

**AGENCY:** Office of the Secretary, Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Department of Commerce (Commerce) is issuing this final rule to remove the internal procedures of Form CD–570, small business review form, the Commerce Acquisition Regulation (CAR). The purpose of the administrative rulemaking is to transition internal policies from the public facing regulation to the internal Commerce Acquisition Manual (CAM).

**DATES:** Effective May 12, 2025.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Edward Williams, Senior Procurement Analyst, at 240–482–5242, or by email at *ewilliams1@doc.gov*.

**SUPPLEMENTARY INFORMATION:**

### Background

Commerce is issuing this final rule to transition the internal procedures of completing the CD–570, small business review form, from the public. The purpose of the administrative rulemaking is to align the current and correct practices of the Department of Commerce with the documented process and procedures outlined in regulation and policy. The CD–570 remains a requirement, however, instruction for administration will reside within the CAM. This change allows faster transition of evolving policies and practices within Commerce without bringing disruption to external entities. Contracting Officers will be required to comply with the content requirements set forth in CAM 1319.70 when documenting their small business form for vetting.

### Classification

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule is being issued in compliance with Executive Order 14192.

Pursuant to 5 U.S.C. 553(b)(A), the provisions of the Administrative Procedure Act requiring notice of proposed rulemaking and the opportunity for public participation are inapplicable to rulemakings that are rules of agency organization, procedure, or practice. This rule only removes the instruction for completing Form CD–570 from the CAR but the instruction will remain in the CAM which will remain publicly available. This final rule is a routine organizational rule. Therefore, this rule qualifies for exemption and no public notice and comment period is required.

Additionally, Commerce finds good cause to waive the notice and public comment period for this rule because the effect of the rule does not place any burden on the public or require the public to undertake or cease any particular action. Therefore, a public notice and comment period would be unnecessary and qualifies for waiver under the APA (see 5 U.S.C. 553(b)(B)).