Intergovernmental relations, Reporting and recordkeeping requirements.

Abigale D. Tardif,

Acting Assistant Administrator, Office of Air and Radiation.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 63 of title 40, chapter I, of the Code of Federal Regulations as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AAAAA—National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants

■ 2. Amend § 63.7114 by revising paragraph (c)(2) introductory text to read as follows:

§ 63.7114 How do I demonstrate initial compliance with the emission limitations standard?

* * * * *

(c) * * *

(2) You must develop and submit to the applicable regulatory authority for review and approval, an implementation plan for emission averaging no later than 60 days before the date you intend to demonstrate compliance using the emission averaging option. You must include the information contained in paragraphs (c)(2)(i) through (iii) of this section in your implementation plan.

* * * * *

[FR Doc. 2026–22404 Filed 11–2–26; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 84

RIN 0945–AA27

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

AGENCY: Office for Civil Rights (OCR), Office of the Secretary, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS or Department) issues this rule to revise the regulation implementing section 504 of the Rehabilitation Act of 1973 (section 504) as it applies to recipients of HHS funding (entitled ''Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance,'' (''2024 Final Rule'')), published on May 9, 2024. This rule clarifies that the Department interprets the statutory exclusion of ''gender identity disorders not resulting from physical impairments'' from the terms ''individual with a disability'' and ''disability'' set forth in our regulations to encompass ''gender dysphoria not resulting from a physical impairment'' for purposes of the regulation. This clarification is necessary to resolve ambiguity introduced in the preamble to the 2024 Final Rule and to ensure compliance with the best reading of the governing statute.

DATES: This rule is effective January 4, 2027.

FOR FURTHER INFORMATION CONTACT: John Thompson, Office for Civil Rights, Department of Health and Human Services at (202) 545–4884 or (800) 537–7697 (TDD), or via email at *504@hhs.gov.*

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I. Background

Section 504 of the Rehabilitation Act of 1973 (section 504) prohibits discrimination on the basis of disability in programs and activities that receive Federal financial assistance as well as in programs and activities conducted by any Federal agency.

The Office for Civil Rights (OCR) in the United States Department of Health and Human Services (HHS or the Department) enforces section 504 as well as other statutes that prohibit discrimination on the basis of disability.

Congress passed the Rehabilitation Act in 1973, and what was then the U.S. Department of Health, Education, and Welfare issued regulations to implement section 504 in 1977. In the following decades, major legislative and judicial developments shifted the legal landscape of disability discrimination protections under section 504. Those developments include multiple statutory amendments to the Rehabilitation Act, the enactment of the Americans with Disabilities Act of 1990 (ADA) and ADA Amendments Act of 2008 (ADAAA), passage of the Affordable Care Act (ACA), and Supreme Court and other significant court cases.

On May 9, 2024, the Department issued the 2024 Final Rule [1] to modernize and clarify its regulations implementing section 504 for recipients of HHS financial assistance mainly due to those developments. As relevant here, the preamble to the 2024 Final Rule discussed whether ''gender dysphoria may constitute a disability under section 504.'' [2] The 2024 Final Rule concluded, in its preamble, that ''gender dysphoria does not fall with the statutory exclusions for gender identity disorders.'' [3] The codified regulatory text defining the term ''disability'' cross-referenced the statutory exclusion in 29 U.S.C. 705(20)(F) [4] and was silent on whether gender dysphoria may be a disability under section 504.[5]

In April of 2025, the Department published a clarification in the **Federal Register**, 90 FR 15412 (Apr. 11, 2025) (2025 Notice), regarding the 2024 Final Rule preamble language that addressed whether gender dysphoria may constitute a disability under section 504. The notice expressed the Department's concern that ''there has been significant confusion about the preamble language referencing gender dysphoria in the'' 2024 Final Rule.[6] The notice clarified that the 2024 Final Rule ''does not say that gender dysphoria is a disability'' and that the preamble language ''does not have the force or effect of law'' and ''cannot be enforced.'' [7]

The Proposed Rule

On December 19, 2025, the Department published a proposed rule to amend 45 CFR part 84, Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance.[8] The proposed rule sought to resolve the ambiguity that the Department's April 2025 Notice

[1] 89 FR 40066 (May 9, 2024).

[2] 89 FR at 40069.

[3] *Id.*

[4] Under section 504, ''the term 'individual with a disability' does not include an individual on the basis of—(i) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders; . . . .'' 29 U.S.C. 705(20)(F)(i).

[5] *See* 45 CFR 84.4(g) (2024 Rule) (''Exclusions. The term 'disability' does not include the terms set forth at 29 U.S.C. 705(20)(F)'').

[6] 90 FR 15412.

[7] *Id.*

[8] 90 FR 59478 (Dec. 19, 2025).

identified by ensuring compliance with the best reading of section 504.

The rule proposed to clarify part of the regulatory definitions of ''disability'' and ''individual with a disability'' through the best reading of the relevant statutory provisions.[9] As defined in statute, the terms ''individual with a disability'' and ''disability'' exclude ''transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders.[10] The proposed rule interpreted ''gender identity disorders not resulting from physical impairments'' to encompass ''gender dysphoria not resulting from a physical impairment'' for purposes of the 2024 Final Rule's definitions of ''individual with a disability'' and ''disability.'' [11]

The proposed rule described the relevant statutory framework and history for the definition of disability in section 504.[12] The proposed rule explained that Congress amended the Rehabilitation Act more than once to align its key definitions with those in the ADA and subsequent amendments to the ADA.[13] The terms ''disability'' and ''individual with a disability'' in section 504 are such definitions that Congress aligned.[14] Congress enacted the exclusion of ''gender identity disorders not resulting from physical impairments'' in the ADA in 1990 [15] and aligned that definition in the Rehabilitation Act in 1992.[16]

Neither section 504 nor the ADA define ''gender identity disorders'' in the statutory exclusion from the terms ''disability'' and ''individual with a disability.'' [17] The proposed rule reasoned that ''the term must be given the 'ordinary meaning' it had at the time of its adoption.'' [18] The proposed rule documented and summarized the relevant medical diagnostic history of the term ''gender identity disorders'' at the time Congress excluded ''gender identity disorders not resulting from physical impairments'' [19] from these definitions. The Department relied on the revised third edition of the American Psychiatric Association's Diagnostic and Statistical Manual (DSM–III–R) from 1987, which was the edition in effect during 1990 and 1992 when Congress enacted the statutory exclusions in the ADA and the Rehabilitation Act.[20]

The proposed rule also documented and summarized the relevant medical diagnostic history of the term ''gender identity disorders'' in the fourth edition of the DSM (DSM–IV) released in 1994 and the term ''gender dysphoria'' in the fifth edition of the DSM released in 2013 (DSM–5).[21] The Department acknowledged that, while later editions of the DSM may be relevant, ''evolving medical classifications of gender disorders cannot change the meaning of the statutory language.'' [22]

Overview of Public Comments

The Department sought comments on the proposed rule. The comment period was set to end on January 20, 2026. Due to technical issues and numerous commenters requesting a sixty (60) rather than thirty (30) day comment period, in part because the comment period overlapped with end of the year holidays and scheduled vacations, the Department extended the comment period to February 20, 2026.

The Department received over 380 comments in response to the proposed rule. A wide range of individuals and organizations submitted comments, including private citizens, health care workers and institutions, educators, disability advocacy organizations, faith-based organizations, professional associations, state Attorneys General, and members of Congress. These comments were divided in support for and opposition to the proposed rule, and the Department reviewed and analyzed all of the comments.

II. Overview of the Final Rule

The text of the final rule is unchanged from the proposed rule.

This rule clarifies that the Department interprets the statutory exclusion of ''gender identity disorders not resulting from physical impairments'' from the terms ''individual with a disability'' and ''disability'' set forth at 29 U.S.C. 705(9) & (20)(F)(i), and 42 U.S.C. 12211(b), to encompass ''gender dysphoria not resulting from a physical impairment'' for purposes of part 84. This clarification is necessary to resolve ambiguity introduced in the preamble to the 2024 Final Rule and to ensure compliance with the best reading of the statute.

III. Response to Public Comments

The Department has summarized public comments and responses to those comments into 12 categories:

- general comments;
- comments on the Department's authority for this final rule;
- comments on the interaction of the rule with other laws and legal principles;
- comments on administrative procedure;
- comments on regulatory history and caselaw;
- comments on the need for the proposed rule;
- comments on the definition of disability;
- comments on the meaning of statutory language;
- comments on reliance interests;
- comments on the progression of definitions in the DSM;
- comments on regulatory alternatives; and
- comments on potential federalism implications.

General Comments [23]

Comments: Several commenters expressed support for the proposed rule because they believe that the rule will ensure that only people with ''legitimate disabilities'' receive legal protections under section 504. Some expressed their belief that gender dysphoria is ''illegitimate'' and based on an internal sense of psychological self rather than a ''true disability.''

Response: The Department notes that this rulemaking is based on an interpretation of the exclusions to the term ''individual with a disability'' at 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1) and does not make a judgment on whether gender dysphoria not resulting from physical impairments is ''legitimate'' or a ''true disability.''

Comments: A group of commenters expressed support for the proposed rule based on the belief that if gender dysphoria could be a disability under section 504, clinicians would be required to provide sex-rejecting procedures and counseling to patients to treat such gender dysphoria under the theory that preventing, limiting, or

[9] The statutory exclusions relevant to these terms are set forth at 29 U.S.C. 705(20)(F)(i), 42 U.S.C. 12211(b).

[10] 29 U.S.C. 705(9) & (20)(F)(i), 42 U.S.C. 12211(b)(1).

[11] 90 FR at 59480–82.

[12] *See* 90 FR at 59478–79 (describing relevant Congressional action).

[13] *See* 90 FR at 59478–79 (describing statutory history).

[14] *See* 90 FR at 59479 (describing statutory history).

[15] Americans with Disabilities Act of 1990, Public Law 102–569, tit. V, sec. 511(b), 104 Stat. 327 (1990) (codified at 42 U.S.C. 12211(b)).

[16] Rehabilitation Act Amendments of 1992, Public Law 102–569, sec. 102(f)(4), 106 Stat 4344 (codified at 29 U.S.C. 705(20)(F)).

[17] 90 FR at 59480.

[18] 90 FR at 59480 (citations omitted).

[19] 90 FR at 59479.

[20] 90 FR at 59479.

[21] *See* 90 FR at 59479 (comparing and evaluating text from each edition).

[22] 90 FR at 59482.

[23] When phrases appear in quotation marks in the Department's summary of comments, the phrase as it appears in the comment summary was used in the comment(s) being summarized.

interfering with such procedures may amount to disability discrimination. Some commenters also stated that if gender dysphoria is considered a disability under section 504, then the Department considers such gender dysphoria to amount to an immutable characteristic. Accordingly, clinicians may feel constrained from practicing medicine in a manner that aligns with their personal beliefs. Some commenters stated that clinicians with moral or religious beliefs concerning certain procedures would be faced with having to violate those beliefs if gender dysphoria not resulting from physical impairment was a protected disability under section 504.

Response: As a threshold matter, the Department handles allegations of disability discrimination on a case-by-case basis and cannot opine on particular factual scenarios. The Department recognizes that clinicians may hold moral or religious beliefs about certain procedures that are used as treatments for gender dysphoria not resulting from physical impairments. In addition to enforcing section 504, the Office for Civil Rights also enforces conscience and religious freedom laws that may protect such clinicians and other health care workers in such situations.[24]

Comments: Multiple commenters stated that excluding gender dysphoria not resulting from physical impairments from coverage as a disability would significantly restrict discrimination protections for individuals who identify as transgender; would result in people with gender dysphoria being turned away from basic services; and would result in bias, prejudice, and mistreatment. They argue that these impacts would result in additional poor health outcomes for individuals who identify as transgender, such as depression, anxiety, and suicide. Commenters also allege that this rulemaking is based on an effort to harm individuals who identify as transgender for the express reason of political gain rather than the best reading of the statute or relevant scientific evidence.

Response: This final rule is not based on an effort to harm a population for political gain. The rule reaffirms certain statutory exclusions from the definitions of ''disability'' and ''individual with a disability.'' As the proposed rule explained, this is the best reading of the statute, informed, in part, by the relevant medical diagnostic history of the term ''gender identity disorders'' in the DSM–III–R, which was in effect at the time Congress enacted the statutory exclusions.[25]

To the extent applicable, individuals with gender dysphoria continue to be covered by Federal nondiscrimination laws that protect them from discrimination based on their race, color, and national origin,[26] biological sex,[27] age,[28] and disability.[29] This rule clarifies that individuals do not have a basis in section 504 to claim that gender dysphoria amounts to a physical or mental impairment that substantially limits one or more major life activities and entitles them to the disability rights protections of section 504.

Comments: Many commenters asserted that this proposed rule ignores scientific and medical consensus and the perceived need for sex-rejecting procedures for individuals with gender dysphoria. These commenters note that there has been a shift in medical understanding that recognizes the need to treat the distress caused by association with the other gender, rather than a need to treat the association with the other gender itself.

These commenters claim that the proposed rule disregards scientific psychiatric consensus that gender dysphoria not resulting from physical impairment is a recognized disorder that is separate from gender identity disorder. They said that gender dysphoria not resulting from physical impairment is a well-researched medical condition that can cause clinically significant distress or impairment, and that the medical consensus, including that from the American Psychiatric Association, is that such gender dysphoria should be treated through their preferred methods.[30] They note that the DSM–5 no longer includes the term ''gender identity disorder,'' but instead uses the term ''gender dysphoria.'' They also note that if gender dysphoria not resulting from physical impairments is not considered a medical condition or disability under section 504, there may be significant effects on insurance coverage, potentially limiting access to certain treatments or procedures due to out-of-pocket cost.

Response: It is beyond the scope of this final rule to regulate treatment methods or clinical standards of care for gender dysphoria not resulting from physical impairments. The scope of this rule is the best reading of the statutory exclusions from the terms ''disability'' and ''individual with a disability,'' including that ''gender dysphoria not resulting from physical impairments'' is included within the exclusion for ''gender identity disorders not resulting from physical impairments.'' The best reading of the statute is informed, in part, by the relevant medical diagnostic history of the term ''gender identity disorders'' in the DSM–III–R, which was in effect at the time Congress enacted the statutory exclusions using this term.[31] The proposed rule identified the following gender identity disorders in the third edition of the DSM that were associated with symptoms such as anxiety and depression.[32]

- ''Gender Identity Disorder of Childhood'' was marked by ''persistent and intense distress in a child about his or her assigned sex and the desire to be, or insistence that he or she is, of the other sex.'' [33]
- ''Transsexualism''—An ''essential feature[ ]'' of ''transsexualism'' included ''a persistent discomfort and sense of inappropriateness about one's assigned sex in a person who has reached puberty.'' [34]
- ''Gender Identify Disorder of Adolescence or Adulthood, Nontranssexual Type'' included ''a persistent or recurrent discomfort and sense of inappropriateness about one's assigned sex[.]'' [35]
- ''Gender Identity Disorder Not Otherwise Specified'' served as a catch-all for ''[d]isorders in gender identity that are not classifiable as a specific Gender Identity Disorder.'' [36]

The Department stands by its position in the proposed rule that, while later editions of the DSM may be relevant in some circumstances, evolving medical classifications of gender disorders cannot change the meaning of the statutory language.[37]

[24] *See e.g.,* Church Amendments (42 U.S.C. 300a–7, *et seq.*); Coats-Snowe Amendment (42 U.S.C. 238n).

[25] 90 FR at 59479.

[26] *See e.g.,* Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d).

[27] *See e.g.,* Title IX of the Education Amendments of 1972 (20 U.S.C. 1681).

[28] *See e.g.,* The Age Discrimination Act of 1975 (42 U.S.C. 6101).

[29] *See e.g.,* Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

[30] *See* American Psychiatric Association, What is Gender Dysphoria?, *https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria* (last visited August 4, 2026); American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 452–53 (5th ed. 2013).

[31] *See Niz-Chavez* v. *Garland,* 593 U.S. 155, 160 (2021) (''When called on to resolve a dispute over a statute's meaning, this Court normally seeks to afford the law's terms their ordinary meaning at the time Congress adopted them.'').

[32] 90 FR at 59479.

[33] 90 FR at 59479 (DSM citations omitted).

[34] *Id.* (DSM citations omitted).

[35] *Id.* (DSM citations omitted).

[36] *Id.* (DSM citations omitted).

[37] 90 FR at 59482. *Loper Bright Enterprises* v. *Raimondo,* 603 U.S. 369, 400 (2024) (''[E]very statute's meaning is fixed at the time of

Continued

Comments: Many commenters asserted that rather than limiting confusion, as the Department intends, this rulemaking will cause additional confusion. Commenters contend that the confusion stems from multiple factors:

- The Department's position in this final rule is at odds with a ruling from the Fourth Circuit, the only circuit court to rule on the merits of whether gender dysphoria may be a disability under section 504 and the ADA; [38]
- The Department appears to be reversing its position from 2024, which commenters said had reflected the Department's acknowledgement that gender dysphoria not caused by a physical impairment could satisfy the elements of the definition of a disability in certain circumstances;
- Insufficient caselaw exists to justify the shift in legal conclusion; and
- Many recipients may refer to the three-prong disability test at 45 CFR 84.4(a)(1), rather than a statutory exclusion, to determine whether gender dysphoria amounts to a disability.

Response: The Department addressed the Fourth Circuit decision in the proposed rule and acknowledges that *Williams* is binding precedent within federal courts in Maryland, North Carolina, South Carolina, Virginia, and West Virginia.[39] The Fourth Circuit decision in *Williams* applies only to the Fourth Circuit and it diverges with the rulings of numerous other courts.[40] Additionally, the court in Williams noted that gender dysphoria amounts to a subset of gender identity disorders.[41] As the Department maintains throughout this rulemaking, because gender dysphoria amounts to a subset of gender identity disorders, statutory exclusions for gender identity disorders not resulting from physical impairments necessarily apply to gender dysphoria not resulting from physical impairments.

The Department accordingly disagrees that this rule will cause confusion. Because of the ambiguity introduced by the preamble discussion in the 2024 Final Rule, the Department is concerned that individuals and recipients may be under the misconception that individuals are entitled to disability protections under section 504 based on gender dysphoria not resulting from physical impairments. This rulemaking clarifies that ambiguity and follows the Department's 2025 Notice that stated that the regulatory text of the 2024 Final Rule ''does not say that gender dysphoria is a disability'' and that the preamble language ''does not have the force and effect of law'' and ''cannot be enforced.'' [42] This rulemaking will help recipients and individuals understand the correct interpretation of the law through amended regulatory text rather than the prior, misleading preamble language. The Department is confident that those determining whether a condition is appropriate as the basis for a disability under 84.4 will consider all applicable paragraphs within that section, including the three-prong test at 84.4(a)(1) and the exclusion at paragraph (g) of 84.4.

Comments: Some commenters were concerned about the requirement that the term disability under section 504 only excludes gender identity disorder or gender dysphoria that does not result from physical impairments. They stated that this requirement will require clinicians to make medical determinations as to whether the disorder results from a physical impairment or not without clear guidelines from the Department on how to make that determination. They also stated that the distinction between whether gender dysphoria results from a physical impairment or not is arbitrary and should not determine whether it is a disability under section 504.

Response: The requirement that gender identity disorders must not result from physical impairments in order to be excluded under 42 U.S.C. 12211(b)(1) has existed since 1990 when it was written into the statute by Congress with the enactment of the ADA. The Department has not been made aware of any recent instances in which a clinician has been unable to determine whether a gender identity disorder (including gender dysphoria) has been the result of a physical impairment. The distinction is not arbitrary. The distinction meaningfully lies in the causation of the gender identity disorder as set forth in the statutory text. The Department does not have authority to circumvent the language of the statute and did not have such authority at the time of the preamble to the 2024 Final Rule that created confusion.

Comments: Several commenters said that HHS does not have the authority to pick and choose what conditions will be covered as a disability under insurance plans. They stated that the Federal government cannot rewrite medical consensus, nor can it eliminate a valid medical diagnosis.

Response: The Department agrees that it cannot pick and choose which conditions may be covered as a disability under insurance plans or may amount to disabilities under Federal civil rights laws when excluded disorders are included in statutory language. The Department's obligation is to faithfully apply statutory language to its regulations and enforcement activities, not to attempt to alter statutory language based on recent changes to medical classification of a specific disorder.

Comments: Many commenters alleged that this rulemaking is not being undertaken for the Department's stated reasons. Rather, those commenters alleged that the Department wants to implement ideological agendas and limit civil rights protections for individuals who identify as transgender regardless of a statutory basis or caselaw. They point to the statements of the Secretary of the Department and other HHS officials [43] to contend that the reasons for this rulemaking are ideological only, tied to the Administration's advancement of its policy position that Federal law should only recognize an individual's sex and that individuals who identify as transgender should be denied civil rights protections. Commenters' observations and concerns are also described in this final rule's description of comments received on ''General Administrative Procedure'' matters.

Response: As the Department has stated, this rulemaking advances the best interpretation of the statutory exclusion to the terms ''disability'' and ''individual with a disability'' as these terms are defined in statute for purposes

enactment.'') (quoting *Wisconsin Central Ltd.* v. *United States,* 585 U.S. 274, 284 (2018) (emphasis deleted)).

[38] *See Williams* v. *Kincaid,* 45 F.4th 759 (4th Cir. 2022), *cert. denied,* 143 S.Ct. 2414 (2023).

[39] 90 FR at 59479–80 (discussing *Williams* v. *Kincaid,* 45 F.4th 759 (4th Cir. 2022), *cert. denied,* 143 S.Ct. 2414 (2023)).

[40] *See Duncan* v. *Jack Henry & Assocs., Inc.,* 617 F. Supp. 3d 1011, 1055–57 (W.D. Mo. 2022); *Lange* v. *Houston Cnty.,* 608 F. Supp. 3d 1340, 1361–63 (M.D. Ga. 2022); *Doe* v. *Northrop Grumman Sys. Corp.,* 418 F. Supp. 3d 921, 930 (N.D. Ala. 2019); *Parker* v. *Strawser Constr. Inc.,* 307 F. Supp. 3d 744, 754–55 (S.D. Ohio 2018); *Gulley-Fernandez* v. *Wis. Dep't of Corr.,* No. 15–CV–995, 2015 WL 7777997, at *3 (E.D. Wis. Dec. 1, 2015); *but see Guthrie* v. *Noel,* No. 1:20–CV–02351, 2023 WL 8115928, at *10–13 (M.D. Pa. Sept. 11, 2023); *Kozak* v. *CSX Transportation, Inc.,* No. 20–CV–184S, 2023 WL 4906148, at *4–7 (W.D.N.Y. Aug. 1, 2023); *Doe* v. *Mass. Dep't of Corr.,* No. 17–12255–RGS, 2018 WL 2994403, at *6–7 (D. Mass. Jun. 14, 2018); *Blatt* v. *Cabela's Retail, Inc.,* No. 5:14–cv–04822, 2017 WL 2178123, at *3–4 (E.D. Pa. May 18, 2017).

[41] *See Williams,* 45 F.4th at 768 ('''gender dysphoria' is 'a disability suffered by many (but certainly not all) transgender people.' . . . But '[f]or a subset of transgender people . . . the incongruence results in gender dysphoria—*i.e.,* a feeling of stress and discomfort with one's assigned sex.'''

[42] 90 FR at 15412.

[43] *See e.g.,* U.S. Dep't of Health & Human Servs. You Tube Account, @HHS, Protecting Children (Dec. 18, 2025) *https://www.youtube.com/watch?v=aY1XfN6Tt0Q* (last visited Sept. 1, 2026) (recording press conference).

of section 504 by including the term ''gender dysphoria'' within the term ''gender identity disorder.'' The best understanding of the statute, as written, is not an ideological agenda or policy choice, but rather a mandate of the Supreme Court's interpretation of federal statutes.[44]

Comments on the Department's Authority for This Rulemaking

Comments: Many commenters stated that the Department is well within its authority to undertake rulemaking on this topic, mainly because the preamble to the 2024 Final Rule incorrectly suggested that gender dysphoria may be a disability under section 504. Those commenters expressed their belief that section 504 excludes gender dysphoria, gender identity disorders, and transsexualism from the definition of disability. Some commenters reasoned that the preamble language addressing gender dysphoria related to the 2024 Final Rule was an overstep by the Department, stating that the Department expanded on its delegated statutory authority rather than letting courts decide whether gender dysphoria could be a disability under section 504. Finally, some commenters asserted that this rulemaking correctly interprets the statutory text of 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1), which reflects the intent of Congress, to exclude gender dysphoria not resulting from physical impairments from the definition of disability under section 504.

Response: The Department agrees that this rulemaking is necessary to eliminate the confusion caused by the preamble language in the 2024 Final Rule that introduced ambiguity on whether gender dysphoria not resulting from physical impairments may amount to a disability. As discussed throughout the preamble of this final rule, the Department has set forth its reasoning that gender dysphoria is encompassed by the statutory exclusion of gender identity disorders not resulting from physical impairments at 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1).

Comments: Many commenters expressed that the current rulemaking oversteps the Department's authority by undermining the intent of Congress as expressed through statutory text. By adding language not explicitly included in the statute deciding that gender dysphoria not resulting from physical impairments falls within the exclusion, the commenters argue that the Department is undermining Congress' authority to shape section 504 in a manner not intended by Congress. Commenters also point to the 2008 ADAAA[45] passed by Congress to explain why this final rule is in conflict with the statutory authority for section 504. They note that the 2008 ADAAA stated that the definition of disability should be interpreted broadly and not require extensive analysis.[46] They also state that the term gender dysphoria was widely used within the medical community when the 2008 ADAAA was passed and Congress consciously chose not to update the statutory exclusion language at 29 U.S.C. 705(20)(F) or 42 U.S.C. 12211(b)(1). They argue that this was a signal of Congressional intent that gender dysphoria should not be excluded from the definition of disability under the ADA or section 504. They believe that the Executive Branch is picking and choosing which conditions should be covered by section 504, regardless of actual statutory language and Congressional intent.

Response: The Department appreciate these commenters' views but respectfully disagree with their conclusions. The Department agrees that the best method to interpret the intent of Congress is through the statutory text as it was understood at the time that the text was adopted.[47] While reasonable individuals may disagree over changes to the characterization of medical conditions or other circumstances over time, the statutory text of the law remains unchanged until it is formally changed by Congress. Here, the Department intends to respect the intent of Congress by clarifying in the regulations that existing statutory language referring to gender identity disorders not resulting from physical impairments includes gender dysphoria not resulting from physical impairments, consistent with the understanding of gender identity disorders at the time that Congress adopted the statutory exclusion through the ADA's enactment. The alternative, advancing the opinion that gender dysphoria not resulting from physical impairments might amount to a disability when gender identity disorders are clearly excluded by 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1), would not be the best reading of statutory text and Congressional intent.

As noted, in 2008 Congress passed the ADAAA in an effort to ensure that the ADA was interpreted consistently with the intent of Congress as it was passed in 1990.[48] The ADAAA was silent on the exclusions at 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1). In the absence of any statutory language suggesting that Congress intended to alter the excluded disorders listed at 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1), the Department cannot rationalize any such changes. Additionally, Congress' decision not to update 29 U.S.C. 705(20)(F) or 42 U.S.C. 12211(b)(1) with additional disorders or change existing disorders does not suggest that Congress intended to keep gender dysphoria not resulting from physical impairments off the list of exclusions. Congress did not change 29 U.S.C. 705(20)(F) or 42 U.S.C. 12211(b)(1), signaling only that it did not intend to update those exclusions.

Comments: Many commenters stated that the regulatory language the Department intends to add to this rulemaking is not the best reading of the statute. They reason that altering statutory language should be undertaken by Congress and that the Department oversteps its authority under the ruling in *Loper Bright*[49] when it attempts to alter statutory text. They also argue that at the time that the statutory exclusions were published, gender identity disorders and gender dysphoria were understood to be two separate conditions. They contend that the excluded conditions in the statute from 1990 were considered morally harmful, dangerous, or illegal at the time, and assert that now it is more commonly understood that gender dysphoria does not fall within such categories.

Response: Whether gender identity disorders or gender dysphoria (when not resulting from physical impairments) are or were considered morally harmful, dangerous, or illegal, has no bearing on interpreting 29 U.S.C. 705(20)(F) or 42 U.S.C. 12211(b)(1). Nothing in section 504 indicates that the excluded conditions are listed because they are ''morally harmful, dangerous, or illegal.'' Additionally, the Department is not persuaded that in 1990, when the ADA was enacted, gender identity disorders and gender dysphoria were both broadly accepted terms with different definitions within the medical community. The DSM–III–R, the chief diagnostic manual for

[44] *Loper Bright Enterprises* v. *Raimondo,* 603 U.S. 369 (2024).

[45] Public Law 110–325, sec. 8, 122 Stat. 3553 (2008).

[46] 122 Stat. at 3554–55.

[47] As emphasized in *Loper Bright,* ''[t]hat is the whole point of having written statutes; 'every statute's' meaning is fixed at the time of enactment.' '' *Loper Bright Enterprises* v. *Raimondo,* 603 U.S. 369, 400 (2024) (citation omitted).

[48] 122 Stat. at 3553.

[49] *Loper Bright Enterprises* v. *Raimondo,* 603 U.S. 369 (2024).

mental disorders in 1990, did not mention the term gender dysphoria. It was not until the publication of the DSM–5 in 2013 that the American Psychiatric Association (the publisher of the DSM–5) introduced the term gender dysphoria as a replacement for gender identity disorders.[50] The American Psychiatric Association's introduction of the any new term does not change the meaning of Congress' statute and the Department does not have the authority to circumvent the statutory language based on a later change by the American Psychiatric Association.

Concerning the language added by this rule, the Department does not intend to overstep the statutory text as written by Congress. Instead, the regulatory amendments at 84.4(g) clarify how gender dysphoria not resulting from physical impairments falls within an existing statutory exclusion.

In the 2024 Final Rule, the Department's preamble language created an ambiguity when it suggested that the definition of disability included a disorder excluded by Congress. This rulemaking intends to rectify that ambiguity. As stated in *Loper Bright,* ''even if some judges might (or might not) consider the statute ambiguous, there is a best reading all the same—'the reading the court would have reached' if no agency were involved.'' [51] The Department's process of statutory interpretation here sets forth this best reading.

Comments on the Interaction of the Rule With Other Laws and Legal Principles

Comments: Some commenters expressed their opinion that the preamble regarding gender dysphoria to the 2024 Final Rule violated the major questions doctrine because the Department did not have a clear mandate from Congress to conduct rulemaking on the definition of disability. Those commenters stated that the Department overstepped its authority when it said that gender dysphoria could amount to a disability under certain circumstances in the 2024 Final Rule preamble, and that this rulemaking corrects that mistake by returning to the prior understanding of the definition of disability.

Response: The Department has regulatory authority to adopt a definition of disability that reflects the best reading of section 504 as updated by the ADA and the ADAAA. The Department does not have the authority to expand that statutory definition or narrow a statutory exclusion. Through this rulemaking, the Department intends to eliminate any confusion caused by the 2024 Rule preamble language regarding whether gender dysphoria may be a disability under section 504.

Comments: Many commenters asserted that this rulemaking and the premise that gender dysphoria cannot be considered a disability under section 504 contradict state laws finding the opposite. Some states have their own nondiscrimination laws that extend protections to people with gender dysphoria based on disability status, and these commenters believe that this rulemaking undermines those laws.

Response: The Department's responsibility is to establish section 504 regulations consistent with the Federal statute. The fact that state law may be inconsistent with Federal regulations is irrelevant. Where there is a direct conflict, section 504 and similar Federal nondiscrimination laws will usually preempt conflicting state laws.[52] However, States may impose their own laws,[53] provided the State law does not serve as an obstacle to or frustrate the purpose of Federal law.[54] States cannot dictate the requirements or exclusions of Federal law or regulation.

Comments: Many commenters expressed their belief that this rulemaking violates the Equal Protection Clause of the 14th Amendment of the United States Constitution. They state that the Department has determined, based on animus, that it does not want to extend disability protections to individuals who identify as transgender, and rewrote statutory exclusions to accomplish said goal.

Response: HHS disagrees with comments that the rule violates the Equal Protection Clause of the 14th Amendment of the United States Constitution and rejects the contention that the Department is acting based on animus. Existing statutory language does not prohibit any individual from appropriately invoking the protection of section 504, it only prohibits certain disorders from being considered disabilities under the statute and certain individuals with those disorders from the definition of individuals with disabilities. This rulemaking corrects a previous misinterpretation of statutory language that was set out in the 2024 Final Rule preamble.

Comments: Some commenters expressed concern that recipients covered by section 504 also include health programs and activities covered by section 1557 of the Affordable Care Act (ACA) [55] and public entities covered by ADA title II,[56] and that the exclusions from the section 504 definition of disability would put the definition of disability at odds with the definition of disability within section 1557 of the ACA and title II of the ADA. These commenters also assert a concern that a person with gender dysphoria could be considered an individual with a disability under title II of the ADA or section 1557 of the ADA but would not be considered a person with a disability under section 504.

Response: The changes to the text in this rulemaking do not run counter to the text and requirements of section 1557 of the ACA or title II of the ADA. The only discussion in a rule of whether gender dysphoria not resulting from physical impairments may be considered a disability in prior Federal disability rights regulations occurs in the preamble of the 2024 Final Rule.

Comments on Administrative Procedure

Comments: Some commenters agreed with the Department's decision to use a notice of proposed rulemaking (NPRM) that solicited public comments to correct what they consider to be the overreach of the preamble language to the 2024 Final Rule. They noted that this format of rulemaking allows the public to weigh in on the rulemaking and the Department to consider all comments when deciding on a final rule.

Response: While the Department pursued notice and comment rulemaking for this regulatory amendment, the Department does have the authority, under 5 U.S.C. 553(a)(2), to promulgate rules under section 504 without notice and comment because section 504 governs recipients of Federal financial assistance, all types of which fall into one or more of the exceptions in section 553(a)(2).

Comments: Many commenters disapproved of the Department using a comment period of 30 days for the rulemaking. They believed that due to the importance of the rulemaking and the fact that the comment period overlapped with December and January holidays, a time period of 60 days should be used.

[50] *See* Am. Psychiatric Ass'n, *Gender Dysphoria* (2013), *https://www.psychiatry.org/file%20library/psychiatrists/practice/dsm/apa_dsm-5-gender-dysphoria.pdf.*

[51] *Loper Bright Enterprises,* 603 U.S. at 399 (citations omitted).

[52] U.S. Const. art. VI, cl. 2.

[53] *See* 42 U.S.C. 12201(b).

[54] *See St. Louis Effort for AIDS* v. *Huff,* 782 F.3d 1016, 1021, 1024 (8th Cir. 2015) (partially affirming lower court preliminary injunction because Missouri law ''frustrates Congress' purpose'' and ''pose[s] an obstacle to the accomplishment and execution of the full purposes and objectives of Congress'').

[55] 42 U.S.C. 18116.

[56] 42 U.S.C. 12132.

Response: While a 60-day comment period is not required for this rulemaking, the Department decided to extend the comment due date from January 20, 2026 to February 20, 2026, in part to give the public a longer opportunity to comment on the rulemaking.[57]

Comments: Many commenters argued that the rulemaking violates the Administrative Procedure Act (APA)[58] because it is allegedly arbitrary and capricious; that is, the rulemaking is based on misinformation, assumptions, and animus rather than the Department's stated goals of clarifying confusion and returning to the plain statutory language. In support of these assertions, the commenters point to public statements, which are described in the ''general comments'' section of this final rule, made by Department Secretary Robert F. Kennedy Jr. and then Deputy Secretary Jim O'Neil at a press conference that announced this and two other rulemakings that dealt broadly with gender identity.[59] Commenters claimed that the statements from these two Department leaders, which included assertions that there are only two sexes, assertions that the public figures invoked religion to support their views on these matters, and associated the proposed rule with other rulemakings released on the same day, prove that the Department is not motivated by clearing up confusion, statutory text, or the correct legal interpretation.

Response: The Department is pursuing this rulemaking in an effort to better align its interpretation of the definition of disability with the statutory language at 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1). Numerous Federal courts[60] have signaled interpretations of the law similar to the Department's current position that gender dysphoria not resulting from a physical impairment is excluded from the definition of disability because it constitutes a gender identity disorder not resulting from physical impairments. The Department is pursuing this rulemaking to rectify confusion caused by language in the preamble to the 2024 Final Rule. On December 18, 2025, the Secretary of HHS and the former Deputy Secretary delivered remarks on three rulemakings being pursued by the Department that dealt broadly with gender identity.[61] The two rulemakings published by the Centers for Medicare & Medicaid Services (CMS) do not impact this rulemaking. Regardless of the general views expressed by the Secretary and the former Deputy Secretary at that event, this rulemaking is being pursued for the express reasons given here and in the preamble to the proposed rule and not any other alleged basis.

Comments: Many commenters stated that the Department has failed to provide sufficient scientific and/or medical evidence to support its claim that gender dysphoria should not be considered a disability under section 504. Those commenters stated that the Department's conclusion, that gender dysphoria today is sufficiently similar to gender identity disorders as defined in 1990, is not supported by scientific studies. They also argue that the Department improperly ignores the differences in the versions of the DSM. Some commenters also argued that the Department is violating Executive Order 13563, asserting that this rulemaking is not based off of the best available science and does not result in a beneficial cost-to-benefit ratio.

Response: This rulemaking considers the appropriate evidence that applies to the definition of gender identity disorders as Congress would have considered it in 1990 when it excluded, from the statutory definition of disability, gender identity disorders not resulting from physical impairments. The Department must consider the definitions and plain meanings in place at the time of passage.[62] In 1990, the DSM–III–R was the most contemporary medical literature defining gender identity disorders. The Department considered how the current definition of gender dysphoria, as defined by contemporary medical literature—the DSM–5—compares to the definition of gender identity disorders in 1990. Scientific and medical advancements following 1990 are only considered to the extent that the current diagnosis of gender dysphoria fits into the definition of gender identity disorders from 1990. This is because regulations must be grounded in the underlying statutory text and the meaning of that text cannot evolve without Congressional action. The Department will align with the legislative intent of Congress, as evidenced by statutory text.

Comments: Many commenters objected to the Department's position that the 2024 Final Rule preamble language on gender dysphoria increased confusion concerning whether gender dysphoria could be considered a disability. They argued that the 2024 Final Rule preamble simply restated caselaw and came to the same conclusion that the Fourth Circuit, the only circuit court to consider the issue on the merits, came to—that gender dysphoria could be a disability in appropriate circumstances.[63] They also argue that the Department has not cited evidence that recipients are confused about the definition of disability. For example, commenters asserted that the Department did not allege, or cite, any complaints or compliance reviews it has received or conducted where an individual has alleged disability discrimination based on gender dysphoria and a covered entity has indicated it is unsure whether gender dysphoria is a disability.

Response: Whether the Department has received complaints or conducted compliance reviews concerning whether section 504 applies to individuals with gender dysphoria is not dispositive of whether there is confusion among the public as a result of the 2024 Final Rule preamble. For example, during this rulemaking, the Department received many comments in support of the rulemaking, many of which agree with the Department's position that there is extensive confusion among covered entities over what is covered by section 504 and whether gender dysphoria not resulting from a physical impairment constitutes a disability. Additionally, state Attorneys General sued the Department over the preamble language at issue, arguing that it goes beyond what is required by the underlying statute and burdens recipients.[64]

While the 2024 Final Rule preamble restated the Fourth Circuit opinion in *Williams* v. *Kincaid,* it went further by claiming that section 504 permitted the consideration of gender dysphoria not resulting from physical impairments, as a disability. This conclusion did not adequately incorporate the rulings of other courts or consider the plain meaning of the pertinent statutes.

[57] 91 FR 4467 (Feb. 2, 2026).

[58] 5 U.S.C. 551–559.

[59] *Supra* note 42.

[60] *See Duncan* v. *Jack Henry & Assocs., Inc.,* 617 F. Supp. 3d 1011, 1055–57 (W.D. Mo. 2022); *Lange* v. *Houston Cnty.,* 608 F. Supp. 3d 1340, 1361–63 (M.D. Ga. 2022); *Doe* v. *Northrop Grumman Sys. Corp.,* 418 F. Supp. 3d 921, 930 (N.D. Ala. 2019); *Parker* v. *Strawser Constr. Inc.,* 307 F. Supp. 3d 744, 754–55 (S.D. Ohio 2018); *Gulley-Fernandez* v. *Wis. Dep't of Corr.,* No. 15–CV–995, 2015 WL 7777997, at *3 (E.D. Wis. Dec. 1, 2015).

[61] *See* Full Replay—HHS Makes an Announcement to Protect Children—12/18/25 (Dec. 18, 2025), *https://www.youtube.com/watch?v=VQ0XD5FskKI.*

[62] *Niz-Chavez* v. *Garland,* 593 U.S. 155, 160 (2021) (''When called on to resolve a dispute over a statute's meaning, this Court normally seeks to afford the law's terms their ordinary meaning at the time Congress adopted them.'')

[63] *Williams* v. *Kincaid,* 45 F.4th 759 (4th Cir. 2022), *cert. denied,* 143 S.Ct. 2414 (2023).

[64] *See Texas* v. *Kennedy,* No. 5:24–cv–00225 (N.D. Tex.).

Comments: One commenter alleged that this rulemaking violated the APA by not offering an adequate explanation for its departure from the reasoning in the 2024 Final Rule, ignoring reliance interests of recipients already implementing the 2024 Final Rule, failing to consider the discriminatory effects of the proposed rule's regulatory codification that categorically excludes gender dysphoria not resulting from physical impairments from the definition of disability, failing to consider reasonable alternatives such as individualized assessments, and adopting an expansive reading of a narrow statutory exclusion without justification.

Response: The Department's 2025 Notice has laid out a clear explanation for why the preamble language in the 2024 Final Rule created an ambiguity. The 2025 Notice reminded regulated entities that the 2024 Final Rule ''does not say that gender dysphoria is a disability'' and that language in the preamble to that Final Rule ''does not have the force or effect of law'' and ''cannot be enforced.'' [65] Accordingly, the 2024 preamble does not support the alleged reliance interest or other allegations.

In the proposed rule, the Department identified how it examined the meaning of the statutory language at the time the ADA was passed in 1990 by considering how the DSM defined gender identify disorders and how that aligns with the understanding of gender dysphoria. Through this process, the Department determined the best meaning of the statutory exclusion.

Gender identity disorders not resulting from physical impairments, as defined by the DSM–III–R, include gender dysphoria not resulting from physical impairments. The essential feature of gender identity disorders in the DSM–III–R is an incongruence between assigned sex and gender identity.[66] The essential features of gender dysphoria in the DSM–5 are marked incongruence between experienced or expressed gender and assigned gender, of at least six months' duration along with associated clinically significant distress.[67] This means that a person with gender dysphoria not resulting from physical impairments today would be considered to have a gender identity disorder not resulting from physical impairments as contemplated in 1990 and be subject to the exclusions from section 504.

The Department discusses reliance interests under the subheading ''comments on reliance interests,'' but notes that given the non-binding nature of preamble language generally [68] and the 2025 Notice, no person has sufficient reason to change their behavior or expectations based on the preamble language of the 2024 Final Rule.

Because the Department is bound by statutory text and the best reading of the statute, commenters that raise concerns about discriminatory effects of the statutory language would need to take those concerns to Congress. Concerning individualized assessments, this rulemaking considers such assessments to the extent they are permitted by statutory text. Finally, the Department objects to any suggestion that its reading of 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1) is ''expansive.'' The plain language supports the Department's interpretation that gender dysphoria not resulting from physical impairments falls within the exclusion of gender identity disorders not resulting from physical impairments.

Comments: While some commenters expressed their approval of the new language that the Department added to the definition of disability to clarify that gender dysphoria not resulting from physical impairments is part of the exclusion under section 504, many commenters objected to the new language. They stated that the Department is undermining statutory language and adding language that Congress did not write or intend. Accordingly, they argue that the Department is overstepping its authority.

Response: The Department agrees with the commenters that the language this rulemaking adds to the regulatory text of section 504 is the best interpretation of the underlying statutes. The text that the Department is adding, which clarifies that gender dysphoria not resulting from a physical impairment is excluded from the definition of disability, is the logical interpretation of the statute that takes into account the diagnosis of gender identity disorders from 1990, when the statute was enacted. The Department disagrees with commenters who state that this rule adds language that Congress did not write or intend, as regulatory text that correctly interprets a statute does not have to repeat the statute verbatim. The proposed language is in line with Congressional intent from 1990 when the ADA was passed.

Comments on Regulatory History and Caselaw

Comments: Some commenters expressed their belief that this rulemaking is justified by the underlying statute as well as by existing caselaw. Some commenters pointed to Federal district court decisions that came to the conclusion advanced by this rulemaking—that gender dysphoria not caused by a physical impairment is encompassed by gender identity disorders not caused by a physical impairment and is correctly excluded from the term disability under section 504. They also note that when the Supreme Court denied a petition for writ of certiorari for *Williams,* two Justices dissented and voiced their opinion that gender dysphoria not caused by a physical impairment would likely be excluded from the definition of disability.[69]

Response: The Department generally agrees with the commenters. As the Department has continuously stated, it is bound by the existing statutory language and cannot undertake rulemaking that expressly contradicts that language. To that effect, suggesting that a disorder clearly excluded from the definition of disability in 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1) could amount to a disability is beyond the Department's authority. The Department also notes that, under existing caselaw, a number of courts have expressed support of the interpretation the Department advances in this rulemaking, while other courts have come to the opposite conclusion.[70] In order to avoid overstepping its authority, the Department adopts regulatory language that adheres to the underlying statutory text.

Comments: Many commenters stated that they disagree with the conclusions of the Department and do not believe that the existing caselaw supports this

[65] *See* 90 FR at 15412.

[66] *See* DSM–III–R at p. 261.

[67] *See* DSM–5 at p. 452.

[68] *See Kisor* v. *Wilkie,* 588 U.S. 558, 621 (2019) (Gorsuch, J., concurring) (''[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.'').

[69] *Kincaid,* 143 S. Ct. at 2417 (Alito, J. dissenting from denial of certiorari).

[70] *See Duncan* v. *Jack Henry & Assocs., Inc.,* 617 F. Supp. 3d 1011, 1055–57 (W.D. Mo. 2022); *Lange* v. *Houston Cnty.,* 608 F. Supp. 3d 1340, 1361–63 (M.D. Ga. 2022); *Doe* v. *Northrop Grumman Sys. Corp.,* 418 F. Supp. 3d 921, 930 (N.D. Ala. 2019); *Parker* v. *Strawser Constr. Inc.,* 307 F. Supp. 3d 744, 754–55 (S.D. Ohio 2018); *Gulley-Fernandez* v. *Wis. Dep't of Corr.,* No. 15–CV–995, 2015 WL 7777997, at *3 (E.D. Wis. Dec. 1, 2015); *but see Guthrie* v. *Noel,* No. 1:20–CV–02351, 2023 WL 8115928, at *10–13 (M.D. Pa. Sept. 11, 2023); *Kozak* v. *CSX Transportation, Inc.,* No. 20–CV–184S, 2023 WL 4906148, at *4–7 (W.D.N.Y. Aug. 1, 2023); *Doe* v. *Mass. Dep't of Corr.,* No. 17–12255–RGS, 2018 WL 2994403, at *6–7 (D. Mass. Jun. 14, 2018); *Blatt* v. *Cabela's Retail, Inc.,* No. 5:14–cv–04822, 2017 WL 2178123, at *3–4 (E.D. Pa. May 18, 2017).

rulemaking. Some of those commenters stated that the Department should only conduct rulemaking changing interpretation on this issue if the highest court to consider the interpretation, such as a circuit court or the Supreme Court, has come to the opposite conclusion. Some commenters stated that the Department should only conduct further rulemaking if the Supreme Court overturns the finding in the Fourth Circuit.

Response: The Department has an obligation to enforce the laws over which it has jurisdiction consistent with the best reading of their statutory text. The preamble to the 2024 Final Rule created ambiguity over whether gender dysphoria not resulting from physical impairments could amount to a disability under section 504. That ambiguity must be addressed to avoid confusion among recipients. The Department will continue to interpret the law consistent with the statutory language, as understood at the time the language was enacted.

We also reiterate that the Fourth Circuit's decision in *Williams* applies only to the Fourth Circuit and advances the argument that gender dysphoria amounts to a subset of gender identity disorders.[71] Because gender dysphoria amounts to a subset of gender identity disorders, statutory exclusions for gender identity disorders not resulting from physical impairments necessarily apply to gender dysphoria not resulting from physical impairments.

Comments: Several commenters asserted that this rulemaking contravenes Congressional intent to provide maximum protection for individuals with disabilities, including the ADAAA, which expanded the definition of disability under the ADA and section 504.

Response: The ADAAA did not change the exclusions in 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1)—rather it expanded the definition of disability under the ADA and section 504 in response to Supreme Court decisions that narrowed the definition of disability in a manner not intended by Congress.[72] The ADAAA ensured that whether an individual has a disability, a record of such an impairment, or is regarded as having such an impairment, does not require extensive analysis. It did not, however, amend or limit the exceptions to the term disability under the ADA at 42 U.S.C. 12211(b)(1).

Comments: Some commenters noted that in 2024 the Attorneys General of Texas and other states filed suit against the Department alleging in part that the gender dysphoria language in the preamble to the 2024 Final Rule violates the APA.[73] Those commenters alleged that this rulemaking is being done solely in response to that lawsuit rather than to address any ambiguity or confusion. Some commenters stated that as the preamble to the 2024 Final Rule is not binding, there is no confusion or need for this rulemaking.

Response: The Department reiterates that this rulemaking is being undertaken to erase any confusion caused by the preamble to the 2024 Final Rule. The 2024 lawsuit is indicative of the confusion and legal risk posed by the preamble to the 2024 Final Rule, but it is not the main impetus for this rulemaking. The lawsuit is, in part, the result of the preamble language contained in the 2024 Final Rule that created the ambiguity regarding section 504.

Comments: Concerning the statutory language from 1990, one commenter noted that the legislative record was steeped in animus against individuals who identify as transgender, and as such, should not be followed.

Response: The Department has no authority to change the statutory language from 1990 or the Congressional legislative record. The Department cannot disregard the plain language of the statute as enacted by Congress.

Comments: One commenter stated that the Supreme Court has already decided in *Bostock* v. *Clayton Cnty,* 590 U.S. 644 (2020), that discrimination against individuals who identify as transgender, based on their gender identity, is sex discrimination and that this rulemaking runs afoul of that Supreme Court precedent.

Response: This rulemaking does not address sex discrimination, which is outside the scope of section 504 and this rulemaking.[74] This rulemaking only considers whether gender identity disorders not resulting from physical impairments fall into an explicit statutory exclusion to the term disability under section 504.

Comments on the Need for the Rule

Comments: Many commenters agreed with the Department's logic for this rulemaking—that the preamble language in the 2024 Final Rule was sufficiently unsupported and confusing as to require this rulemaking for clarification. Those commenters agreed that the statutory language at 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1) excluded gender dysphoria not resulting from physical impairments from the terms disability and individual with a disability under section 504 and that the best way to correct the ambiguity that the Department created in 2024 is through this rulemaking.

Response: The Department agrees with these commenters and believes that the most appropriate method to correct misinterpretation and eliminate confusion is to adopt clarifying regulatory text through the rulemaking process.

Comments: Many commenters voiced their opinion that the Department has not adequately explained the need for this rulemaking. For example, some commenters noted that the Department already issued a statement in the **Federal Register** acknowledging that the preamble to the 2024 Final Rule is not legally enforceable.[75] Those commenters reasoned that if preamble language is unenforceable, there is no need to alter regulatory language to account for that preamble language.

Response: The Department agrees that the preamble language of the 2024 Final Rule is not legally enforceable, but the confusion it has caused among recipients and members of the public necessitates this rulemaking. Individuals not well versed in Federal statutes and regulations likely do not know the difference between preamble and regulatory text. Additionally, several litigants, including some state Attorneys General, have already sued the Department as a result of the 2024 preamble language.[76] To ensure that the regulation implementing section 504 to HHS federally assisted programs reflects the correct interpretation of the law, rulemaking is necessary.

[71] *See Williams,* 45 F.4th at 768 (" 'gender dysphoria' is 'a disability suffered by many (but certainly not all) transgender people.' . . . But '[f]or a subset of transgender people . . . the incongruence results in gender dysphoria—*i.e.,* a feeling of stress and discomfort with one's assigned sex.' ").

[72] *See e.g., Sutton* v. *United Airlines, Inc.,* 527 U.S. 471 (1999) (ruling that mitigating measures must be considered when determining whether an impairment substantially limits major life activities); *see also Toyota* v. *Williams,* 534 U.S. 184 (2002) (ruling that a disability's impact must be permanent or long-term and the tasks at issue must be of central importance to most people's lives).

[73] *See Texas* v. *Kennedy,* No. 5:24–cv–00225 (N.D. Tex.); *see also Rapides Parish Sch. Bd.* v. *U.S. Dep't of Health & Hum. Servs., et al,* 1:25–cv–70 (W.D. La.) (challenging, among other claims, the 2024 Final Rule's interpretation of whether gender dysphoria may be considered a disability under section 504).

[74] The Department notes, however, that the Supreme Court's decision in *Bostock* v. *Clayton Cnty,* 590 U.S. 644 (2020), expressly limited its decision to Title VII.

[75] 90 FR 15412 (Apr. 11, 2025).

[76] *See Texas* v. *Kennedy,* No. 5:24–cv–00225 (N.D. Tex.); *Rapides Parish Sch. Bd.* v. *U.S. Dep't of Health & Hum. Servs., et al,* 1:25–cv–70 (W.D. La.).

Comments: Many commenters alleged that the Department's proffered reasons for rulemaking were pretextual and that the Department undertook this rulemaking due to bias and hate aimed at people who identify as transgender. Additionally, some commenters alleged that the only reason the Department is pursuing this rulemaking is because the current Administration wants to reinterpret the definition of disability to align with its own views. Commenters stated that this rulemaking is based solely on the policy preference of a new Administration, which commenters state is insufficient reason for rulemaking.

Response: The Department believes that individuals with gender dysphoria should be treated with dignity and respect. The Department reiterates that the preamble language in the 2024 Final Rule that suggested gender dysphoria not resulting from physical impairments could be a disability under section 504 was the result of an incorrect interpretation of the applicable statute as well as an overreliance on a single decision that applies to one judicial circuit.[77] This rulemaking is not intended to restrict or remove any civil rights protection to which individuals with gender dysphoria not resulting from physical impairments are entitled. Rather, it rectifies the ambiguity created by the preamble of the 2024 Final Rule. The Department does not intend to convey any position on the legitimacy, morality, or proper treatment of gender dysphoria not resulting from physical impairments in this rulemaking beyond clarifying its application to section 504.

Comments: Some commenters expressed their opinion that, in opposition to the Department's stated goals, this rulemaking will actually result in additional litigation, which would carry associated costs and thus diminish the justification for this rule. These commenters also believe that the reasoning given in the 2024 Final Rule preamble language, which included supporting caselaw, would be persuasive to a court of law, particularly because this rule adds regulatory text to the definition of disability not explicitly included in section 504.

Response: The Department is aware that, regardless of what position it takes, it is possible that litigation will ensue. As previously noted, the Department has already been sued for its position in the 2024 Final Rule preamble.[78] The Department does not believe that the reasoning expressed in the 2024 Final Rule preamble is sufficiently persuasive in light of statutory text and believes that the outcome of any future litigation concerning its interpretation of whether gender dysphoria not resulting from physical impairments is a disability under section 504 will favor the Department's position.

Concerning costs of litigation, the Department recognizes that any rulemaking is subject to litigation, but the uncertainty of whether such litigation will arise, how time-consuming it may be, and whether other courts rule on the same subject matter, makes quantifying the costs of any such litigation to a reasonable level of accuracy impossible.

Comments: Some commenters expressed their belief that the Department made its determination that gender dysphoria is not a disability based on a specific study[79] and called into question the logic of that study.

Response: The Department is not undertaking this rulemaking in response to the study cited by commenters because that study is not relevant to the term disability under section 504. Rather, it is undertaking this rulemaking to better align its section 504 rule with the statutory language at 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1), which excludes gender identity disorders not resulting from physical impairments from the definition of disability under section 504. Based on the definition of gender identity disorders under the DSM–III–R and gender dysphoria under the DSM–5, the Department is conducting rulemaking to address the ambiguity created by the 2024 Final Rule preamble.

Comments: Some commenters noted that because of the changes made to the section 504 Final Rule regulation text at 45 CFR 84.4(g), the Department's section 504 regulation now differs from the Department of Justice's regulation implementing title II of the ADA.[80] These commenters stated that the differences in the definitions of disability in the two regulations will lead to confusion among members of the public, including recipients.

Response: The Department does not believe that this minor difference in regulatory text will lead to confusion among members of the public and recipients. This rulemaking only addresses the ambiguity introduced by the preamble to the 2024 Final Rule, the only disability discrimination regulation where gender dysphoria is considered as a potential disability. The Department of Justice also approved this rule through the Executive Order 12250 review process.

Comments: Some commenters noted that the Department's 2025 Notice has already clarified that the preamble language in the 2024 Final Rule is not enforceable. Accordingly, they argue that by the Department's own admission, there is no need for this rulemaking.

Response: While the Department agrees that the language in the 2024 Final Rule preamble is not binding and cannot impose new legal requirements on recipients, the language introduced an ambiguity warranting regulatory resolution.

Comments on the Definition of Disability

Comments: Many commenters agreed with the Department's interpretation of the definition of disability, especially the exceptions at 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1). Those commenters reasoned that the statutes provide a clear restriction on the application of the term ''disability'' to gender identity disorders, and that at the time that the statute was enacted, the term ''gender identity disorder'' was understood to cover the manifestations that we today understand to be associated with gender dysphoria. The commenters also stated their beliefs that the majority of instances of gender dysphoria are not caused by physical impairments and that Congress clearly stated its intent that gender identity disorders and gender dysphoria should only be considered disabilities if they were caused by some physical impairment.

Response: The Department agrees that, in 1990, gender identity disorders were understood to include the manifestations that we, today, understand to be associated with gender dysphoria. The Department does not take any position on the frequency of instances of gender dysphoria caused by physical impairments versus those not caused by physical impairments but agrees that Congress clearly intended to differentiate between the two instances.

Comments: Some commenters stated that the definition of gender dysphoria in the DSM–5 seems to amount to a more severe version of a gender identity disorder as defined in 1990.[81] Accordingly, a diagnosis of gender

[77] *See Williams* v. *Kincaid,* 45 F.4th 759 (4th Cir. 2022), *cert. denied,* 143 S.Ct. 2414 (2023).

[78] *See Texas* v. *Kennedy,* No. 5:24–cv–00225 (N.D. Tex.); *Rapides Parish Sch. Bd.* v. *U.S. Dep't of Health & Hum. Servs., et al,* 1:25–cv–70 (W.D. La.).

[79] U.S. Dep't of Health & Human Servs., *Treatment for Pediatric Gender Dysphoria: Review of Evidence and Best Practices* (Nov. 19, 2025), *https://opa.hhs.gov/sites/default/files/2025-11/gender-dysphoria-report.pdf.*

[80] 28 CFR 35.108(g).

[81] *See* DSM–III–R at p. 261; see also DSM–5 at p. 452.

dysphoria today would necessarily fall within the category of gender identity disorder if the same symptoms manifested in 1990. Based on this logic, gender dysphoria falls under the umbrella of gender identity disorder and is correctly excluded from the definition of disability in this rule. To find otherwise would be to make the logical fallacy of considering a subset (gender dysphoria) to be both within and outside of a larger category (gender identity disorder) simultaneously.

Response: The Department agrees that an individual diagnosed with gender dysphoria today would necessarily meet the criteria to have been diagnosed with GID in 1990, clearly falling within the excluded category as considered by 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1). Regardless of whether contemporary diagnoses have changed to focus more on distress, the statutory requirements remain.

Comments: Some commenters expressed their belief that any distress experienced by someone with gender dysphoria or a gender identity disorder is not comparable to the distress experienced by someone with a disability as defined by section 504. The commenters go on to state that gender dysphoria, while likely caused by a ''mental illness,'' is not comparable to the debilitating impact of ''disabilities'' as statutorily defined.

Response: The Department does not take any position in this rulemaking on whether individuals with gender dysphoria experience distress comparable to the distress experienced by individuals with a disability as defined by section 504. This rulemaking only recognizes that the definition of gender dysphoria would constitute a subset of the definition of gender identity disorders and, thus, would fall within an excluded category under 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1).

Comments: Commenters stated that under the test for the definition of disability, gender dysphoria may qualify as a disability depending on the specific circumstances. Specifically, gender dysphoria is a physical or mental impairment, such as a psychological disorder, that substantially limits one or more major life activities, like thinking, communicating, or interacting with others.

Response: Regardless of whether gender dysphoria not resulting from a physical impairment satisfies the requirements at 45 CFR 84.4(a)(1), it is included as part of an explicit exclusion at 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1). The disorders at 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1) are excluded from the terms ''disability'' and ''individual with a disability.''

Comments: Some commenters alleged that gender dysphoria fits into the narrower definition of disability considered by this rulemaking because it is generally caused by a physical impairment. Those commenters alleged that a growing body of research has found physical components related to various bodily systems, including neurological, psychiatric, and the endocrine system, of those who experience gender dysphoria.

Response: This rulemaking does not take any position on whether a specific instance of gender dysphoria results from a physical impairment. The Department recognizes that Congress intended to differentiate between gender identity disorders (including gender dysphoria) not resulting from a physical impairment and those that do result from a physical impairment, as those terms were understood in 1990 when the statutory exclusion was adopted.

Comments: Many commenters stated their belief that the definition of gender dysphoria is narrower than the definition of gender identity disorders as considered in 1990, and accordingly the exclusion of gender identity disorders should not apply to gender dysphoria. These commenters asserted that while gender identity disorders broadly included people identifying with the other gender, gender dysphoria focuses on the clinically significant distress experienced by some individuals who identify with the other gender. Accordingly, they contend that the narrower classification of gender dysphoria not resulting from physical impairments could be considered a disability under section 504. Some commenters objected to the characterization of gender dysphoria as a subset of gender identity disorders, claiming instead that the two diagnoses cannot be reasonably compared because they focus on different symptoms (clinical distress resulting from identifying with the other gender versus merely identifying with the other gender). One commenter asserted that because the diagnoses of gender identity disorder and transsexualism are not in the current DSM, they are now nonexistent and cannot be diagnosed.

Response: Under DSM–5, gender dysphoria diagnoses focus on the distress caused by an association with the other gender. Under DSM–III–R, diagnoses of gender identity disorders focused on both the association with the other sex and the resulting distress. The slight shift in focus does not change the fact that in order for an individual to experience the distress required by gender dysphoria, they must first associate with the other gender and/or sex, as required by gender identity disorders. Both disorders are characterized by the same symptoms.

As explained before, changes to current medical diagnoses, including through the current DSM–5, do not alter the definitions of disorders included in statutes by Congress. Although the current DSM does not define gender identity disorders or transsexualism, those terms were defined in the relevant DSM in 1990.

Comments: Many commenters noted that scientific progress is constantly evolving, resulting in changes to the medical definitions of certain disorders. They argued that Congress is not required to update statutory language in order to account for those changes. For example, the 2024 Final Rule updated the definition of disability to note that physical or mental impairments include long COVID.[82] Commenters also noted that there have been changes to the medical definitions of Asperger's Syndrome and Dyslexia over the years that have not resulted in the need for updated statutory language. Commenters argued that even if a person with gender dysphoria today would likely be diagnosed with gender identity disorder in 1990, the fact that the DSM changed the terms and diagnostic criteria for specific conditions should preclude them being equated.

Response: Conditions such as long COVID are considered impairments because they meet the statutory and regulatory requirements and there are no statutory exclusions, either at 29 U.S.C. 705(20)(F) or elsewhere, that would exclude them. Indeed, a physical or mental impairment that stems from an upper respiratory infection such as COVID–19, which did not exist in 1977 or 1990, that substantially limits a major life activity or major bodily function, fits the statutory definition of disability. By contrast, gender identity disorders not resulting from physical impairments are specifically excluded by the statutory language, and a characterization shift between gender identity disorders and gender dysphoria in the interim does not change the statutory exclusion.

Comments: One commenter noted that the preamble to the Department of Justice's implementing regulation for Title II of the ADA states that ''[i]t is not possible to include in the legislation a list of all the specific conditions, diseases, or infections that would constitute physical or mental

[82] *See* 45 CFR 84.4(b)(2).

impairments because of the difficulty of ensuring the comprehensiveness of such a list, particularly in light of the fact that new disorders may develop in the future.'' That commenter asserted that gender dysphoria is one such new disorder meant to be encompassed by the definition of disability.

Response: The Department is not persuaded by this reasoning. The Department continues to believe that the exclusion of gender identity disorders not resulting from physical impairments, as set out in 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1), includes and encompasses gender dysphoria not resulting from physical impairments.

Comments on the Meaning of Statutory Language

Comments: Many commenters opined that the Department's rulemaking correctly interprets the plain meaning of the statute (29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1)) to exclude individuals with gender dysphoria not resulting from physical impairments from the term individuals with a disability. They stated that in 1990, when Congress passed the ADA, the definition for gender identity disorders in the DSM–III–R was sufficiently broad as to encompass the definition of gender dysphoria in the DSM–5 in 2024. That is to say, an individual diagnosed with gender dysphoria in 2024 would have been diagnosed with a gender identity disorder in 1990. They noted that the key diagnostic criteria set out in the DSM for gender identity disorder in 1990 remain in effect today. The plain meaning of the statute in 1990 is the same as the plain meaning in 2024, irrespective of any evolution in the DSM's diagnostic standards, without additional legislation.

Response: The Department agrees with these commenters.

Comments: Some commenters expressed their belief that the existing statutory language at 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1) does not exclude gender dysphoria from the definition of disability and alleged that the Department's updated regulatory language goes beyond existing statutory language. As noted elsewhere, these commenters argue that the diagnostic criteria for gender dysphoria with a focus on significant distress are different than the criteria for gender identity disorders. They also noted that the language of 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1) seems to identify gender identity disorders, as well as other identified disorders excluded from the definition of disability, as ''sexual behavior disorders.'' They assert that gender dysphoria not resulting from physical impairments is not a sexual behavior disorder as diagnosed using the DSM–5, and commenters argued that the term ''gender identity disorders,'' as used in the exclusions at 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1) likely referred to individuals that received sexual gratification from appearing as the opposite sex.

Response: The Department appreciates the position of these commenters but maintains that the statutory language at 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1) that excludes gender identity disorders not resulting from physical impairments encompasses or extends to gender dysphoria not resulting from physical impairments. The language that the Department adds to the regulatory definition of disability in its section 504 rules clarifies that gender dysphoria not resulting from physical impairments falls within the category of gender identity disorders contemplated by 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1) and is, thus, excluded from the term disability. The additional regulatory language is not explicitly stated in the statute but is the best meaning of the statutory language. The diagnostic criteria for gender dysphoria not resulting from physical impairments aligns with the diagnostic criteria of gender identity disorders, which are excluded from the term disability. Relying on the DSM–III–R, an individual with gender dysphoria not on the basis of physical impairments meets the diagnostic criteria for gender identity disorder and, thus, would not be considered an individual with a disability. That fact cannot be changed by contemporary changes in the characteristics of certain disorders or the adoption of definitions for ''new'' disorders which can be seen as moving towards normalizing associating with the opposite sex while diagnosing the distress caused by that association.

Comments on Reliance Interests

Comment: Some commenters argued that any reliance interests based on the 2024 Final Rule preamble are unreasonable and unjustifiable since preamble language is not enforceable and the idea that gender dysphoria not resulting from physical impairments could be a disability under section 504 is contradicted by statutory exclusions.

Response: When an agency changes course, it must assess whether its previous position created reliance interests, determine whether those interests are significant, and weigh any such interests against competing policy concerns.[83] In this case, any reliance on the preamble of the 2024 Final Rule was unjustified because the preamble language does not carry the force or effect of law and is contradicted by a statutory exclusion of gender identity disorders that are not caused by physical impairments. The Department thus does not believe that the preamble language to the 2024 Final Rule created any legally significant right or obligation that could give rise to serious reliance interests.[84]

Additionally, the Department clarified in its 2025 Notice, less than a year after the 2024 Final Rule was published, that the preamble language carried no force or effect of law.[85] Even if a recipient were to assert that it had no actual knowledge of the 2025 Notice, the 11-month timeframe during which reliance interests could have developed based on the preamble language in this case differs notably from the longstanding policies that are generally associated with serious reliance interests.[86] Indeed, for decades after the ADA's 1990 implementation and exclusions, and prior to the rulemaking for the 2024 Final Rule, HHS refrained from interpreting gender dysphoria not resulting from physical impairments as separate from gender identity disorders not resulting from physical impairments. It is reasonable to believe that covered entities and individuals had a longstanding reliance interest that gender identity disorders, including gender dysphoria, not resulting from physical impairments were excluded from the terms ''disability'' and ''individual with a disability'' under section 504.

For these reasons, the Department believes that reliance interests as a result of the preamble language of the 2024 Final Rule, if any, are minimal and are entitled to little weight. Any such interests are outweighed by the need to resolve the confusion and uncertainty brought about by the preamble language and realign the rule with the intent of Congress.

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[83] *Dep't of Homeland Security* v. *Regents of the Univ. of Cal.,* 591 U.S. 1, 33 (2020).

[84] *See id.* at 32 (an agency may determine that ''reliance interests in benefits that it views as unlawful are entitled to no or diminished weight''); *see also Food and Drug Administration* v. *Wages and White Lion Invs., L.L.C.,* 604 U.S. 542, 585 (2025) (agency enforcement priorities, which have no force or effect of law, create no legitimate reliance interest).

[85] 90 FR 15412 (Apr. 11, 2025).

[86] *Cf. Encino Motorcars, LLC* v. *Navarro,* 579 U.S. 211, 212–213 (2016) (industry relied on overtime pay rule for decades in structuring compensation arrangements and agency must address those longstanding reliance interests when changing course).

Comment: Some commenters noted that in terms of reliance interests, the Department should consider how states could be exposed to litigation as a result of the 2024 Final Rule preamble language.

Response: The Department acknowledges commenters' concerns that retaining ambiguous preamble language could create inconsistent interpretations and potential litigation risks for states. The language regarding gender dysphoria in the preamble of the 2024 Final Rule could have led states to make changes to their policies and practices. This rule correcting an ambiguity may help eliminate unnecessary investigations, enforcement actions, and private litigation by clarifying that gender dysphoria not resulting from physical impairments is statutorily excluded from the definition of disability under section 504.

Comment: Some commenters stated their opinions that individuals with gender dysphoria not resulting from physical impairments relied on the preamble language in the 2024 Final Rule to the extent that they believed they were protected against disability discrimination in being denied health care services based on their gender dysphoria. They argued that individuals with such gender dysphoria, including individuals with gender dysphoria as well as other disabilities, may now be denied allegedly medically necessary services or receive discriminatory services, resulting in what they assert are poor health outcomes. Some commenters also stated that the reliance interests resulted from the bulk of caselaw that found gender dysphoria could be a disability under section 504, not the Department's 2024 rulemaking.

Response: As stated before, any reliance on the preamble of the 2024 Final Rule was objectively unjustified because the preamble language does not carry the force or effect of law, a 2025 Notice from the Department clarified the Department's position putting recipients on constructive notice,[87] and prior to the 2024 Final Rule, the Department had not interpreted gender dysphoria not resulting from physical impairments as a disability. Indeed, the preamble language in the Final 2024 Rule is contradicted by a statutory exclusion of gender identity disorders that are not caused by physical impairments. When a regulation contradicts other agency and statutory materials, there is good reason to promulgate a new regulation or amend the existing regulation in order to eliminate confusion and ensure that no one incorrectly relies on the mistaken interpretation to their detriment.[88]

While some courts have found that section 504's statutory exclusion does not encompass gender dysphoria, other federal district courts have come to the opposite conclusion and found that gender dysphoria not caused by a physical impairment is not a disability under section 504.[89] While no Circuit Court has reached the latter conclusion, those cases are winding their way through litigation, and the Department maintains that the body of conflicting case law undermines the strength of any reliance interest and is all the more reason to issue this regulation definitively settling the question and preventing any future misplaced reliance.

The Department acknowledges the concerns from some commenters who believe that individuals with gender dysphoria not resulting from physical impairments may believe that they will be denied certain procedures because gender dysphoria not resulting from physical impairments is not a disability under this rule. The concerns, however, are misplaced because this rule does not alter recipients' obligations under existing regulations prohibiting discrimination on the basis of sex or qualifying disability—it solely ensures that section 504 is applied within its statutory limits.

The Department is also not aware of any changes in behavior by recipients or individuals as a result of the gender dysphoria language in the preamble to the 2024 Final Rule, its 2025 Notice, or this rulemaking. The Department has the discretion and authority to investigate any allegation of discrimination within its jurisdiction and will pursue appropriate remedial action in its discretion to resolve a violation of the law.

Comments on the Progression of Definitions in the DSM

Comments: Many commenters agreed that regardless of any changes that the American Psychiatric Association has made over the years to the definition of gender identity disorders, gender dysphoria, or similar diagnoses, the Department must consider the definition of gender identity disorders at the time the statutory language at issue was enacted. They argued that the Department, much like courts, must interpret the words of a statute consistent with their ordinary meaning at the time Congress enacted the statute. They also stated that the current definition of gender dysphoria as defined in the DSM–5 amounts to a subset of gender identity disorders as defined in the DSM–III–R. The essential feature of gender identity disorders in the DSM–III–R is an incongruence between assigned sex and gender identity.[90] The essential features of gender dysphoria in the DSM–5 are marked incongruence between experienced or expressed gender and assigned gender, of at least six months' duration along with associated clinically significant distress.[91] This means that a person with gender dysphoria necessarily has a gender identity disorder as contemplated in 1990 and would be excluded from the protections of section 504.

Response: The Department agrees with these commenters. To correctly interpret what diagnoses are excluded from the definition of disability, the Department must consider how those diagnoses fit into the exclusions at a single point in time—when Congress passed the underlying statute in 1990.

When the Department considers the more contemporary term of gender dysphoria through the lens of gender identity disorders as defined in 1990, the similarities are overwhelming. As the commenters note, an individual with gender dysphoria would likely be diagnosed with a gender identity disorder in 1990. In order to experience the distress required under gender dysphoria, that person must identify with the other sex or gender in a manner that would have resulted in a diagnosis of a gender identity disorder in 1990.

Comments: Some commenters also noted that individuals with a persistent discomfort around their assigned sex and a preoccupation with getting rid of their sex characteristics would have likely been diagnosed with transsexualism in the DSM–III–R, and that the diagnosis for transsexualism is similar to the diagnosis for gender dysphoria. Because transsexualism is excluded from the term disability in the underlying statute, they argue that gender dysphoria should likewise be excluded.

[87] 90 FR 15412 (Apr. 11, 2025).

[88] *Smiley* v. *Citibank (South Dakota), N.A.,* 517 U.S. 735, 742 (1996).

[89] *See De Rossitte* v. *Bondi,* No. 6:25–cv–06113–SOH–MEF, 2025 WL 3899851 at *2 (W.D. Ark. Dec. 18, 2025); *Doe* v. *Northrop Grumman Systems Corp.,* 418 F. Supp. 3d 921, 929 (N.D. Ala. 2019); *Duncan* v. *Jack Henry & Assocs., Inc.,* 617 F. Supp. 3d 1011, 1051–1057 (W.D. Mo. 2022); *Johnson* v. *Fresh Mark, Inc.,* 337 F. Supp. 2d 996, 1001–1002 (N.D. Ohio 2003); *Michaels* v. *Akal Sec., Inc.,* No. 09–cv–01300–ZLW–CBS, 2010 WL 2573988 at *6 (D. Colo. Jun. 24, 2010); *Parker* v. *Strawser Constr., Inc.,* 307 F. Supp. 3d 744, 753–755 (S.D. Ohio 2018).

[90] *See* DSM–III–R at p. 261.

[91] *See* DSM–5 at p. 452.

Response: The Department believes that the diagnosis for gender identity disorders (not resulting from physical impairments) under the DSM–III–R is the more appropriate analogue to the diagnosis for gender dysphoria under the DSM–5. This is because the DSM–III–R includes a number of disorders under the umbrella of ''gender identity disorders,'' including ''Gender Identity Disorder of Childhood,'' ''Transsexualism,'' ''Gender Identity Disorder of Adolescence or Adulthood, Nontranssexual Type (GIDAANT),'' and ''Gender Identity Disorder Not Otherwise Specified.'' [92] Common to all of these gender identity disorders was distress with an individual's biological sex and the desire to be of the other sex.[93] Claiming that gender dysphoria would only fall within the category of transsexualism would potentially ignore instances where gender dysphoria more appropriately falls into the category of gender identity disorder of childhood or GIDAANT, both of which are included within gender identity disorders. Importantly, the American Psychiatric Association has stated that it largely replaced the diagnosis of gender identity disorders with that of gender dysphoria.[94]

Comments: Some commenters argued that the majority of instances of gender dysphoria are not caused by physical impairments and urge the Department to include regulatory text in this rulemaking on the issue. These commenters argue that the plain meaning of ''physical impairment'' along with language in the regulation implementing the 2008 ADAAA [95] advance the notion that gender dysphoria resulting from a physical impairment only applies to instances such as congenital development of ambiguous genitalia, congenital disjunction of internal and external sex anatomy, sex chromosome anomalies, or disorders of gonadal development.

Response: The exclusion of gender identity disorders not resulting from physical impairments has existed for decades and is well established. The Department does not intend to change the standard for gender dysphoria resulting from physical impairment in this rulemaking.

Comments: One commenter noted that the current DSM–5 reclassified other categories that were excluded in DSM–III–R, including voyeurism and exhibitionism, and asked the Department whether those previously excluded categories could be considered disabilities under the 2024 Final Rule.

Response: Any reclassified category or diagnosis that falls within the exclusions in 29 U.S.C. 705(20)(F) would not qualify as a disability under section 504.

Comments: One commenter stated that the DSM–5 changed the diagnosis of gender identity disorders to gender dysphoria, not for clinical reasons, but for political ones.

Response: Regardless of the reason for the change by the American Psychiatric Association, the diagnosis of gender dysphoria is a subset of the diagnosis of gender identity disorders and, thus, warrants its exclusion from the term disability under section 504.

Comments on Regulatory Alternatives

Comment: Three states stated that the Department should rescind the entirety of the 2024 Final Rule, including all new sections concerning nondiscriminatory medical treatment, value assessments, child welfare, effective communication, integration, web access, and medical diagnostic equipment. They stated that the 2024 Final Rule, and anything that ''exceeds statutory authority'' amounts to an unfunded mandate that intrudes on state sovereignty.

Response: These comments are beyond the scope of this rulemaking.

Comment: Some commenters asserted that the Department should not repeal the 2024 Final Rule. They noted that the 2024 Final Rule underwent a lengthy notice and comment period that resulted in over 5,000 comments that the Department considered before publishing the Final Rule. Some commenters stated that the 2024 Final Rule resulted in a myriad of legal protections for people with disabilities, some of which commenters argued were the result of forty years of case law, advocacy, and lawmaking. Commenters asserted that rescinding the 2024 Final Rule would deprive people with disabilities of specific rights. Commenters argued that repeal of the 2024 Final Rule would likely harm individuals with disabilities, including paralyzed veterans and people with muscular dystrophy, by eliminating accessibility requirements for medical diagnostic equipment. Many of those commenters expressed their belief that the Department should keep the 2024 Final Rule intact, and that all of the alternatives that the Department considered before conducting this rulemaking (aside from keeping the 2024 Final Rule as is) amount to reduced protections that help bad actors limit liability.

Response: This comment is beyond the scope of the proposed rule, which addresses a narrow, targeted issue. The ambiguity in the preamble concerning gender dysphoria is distinct from and severable from the protections for individuals with disabilities brought about in the 2024 Final Rule and can be addressed through targeted clarification.

Comments: Many commenters recommended that the Department maintain the 2024 Final Rule and its preamble in its entirety and forego this current rulemaking. Some commenters recommended that the Department withdraw the rule and follow the precedent of court decisions that it cited in the 2024 Final Rule. Those commenters assert that if another circuit court comes to an opposite conclusion to the one reached by the Fourth Circuit concerning whether gender dysphoria not resulting from physical impairments may be a disability under section 504, the Department would have a better justification for this rulemaking. They also contend that a circuit split may result in the Supreme Court weighing in and delivering finality on the matter.

Response: The Department believes that the correct course of action is to conduct rulemaking that promulgates a definition of disability that is the best reading of the statute. The Department is not required to wait an unspecified period of time while additional courts, and possibly the Supreme Court, may or may not deliver opinions on this matter. If the Supreme Court issues an opinion that affects this rulemaking, the Department will respond accordingly to ensure that it correctly interprets the law.

Comment: One commenter stated that the alternatives listed were not seriously considered and that the Department always intended to conduct rulemaking on this issue.

Response: The Department considered alternatives and sought input from the public before issuing a Final Rule. The Department believes that rulemaking is the only way to meaningfully clarify whether gender dysphoria not resulting from physical impairments is covered under section 504.

In addition to notice-and-comment rulemaking, the Department considered several potentially viable alternatives. Leaving the existing preamble language to the 2024 Final Rule in place may lead to the same result after hypothetical future litigation, but that path would not resolve the ambiguity in the meantime, leaving interested parties uncertain of

[92] *See* DSM–III–R at 71–78.

[93] *Id.*

[94] American Psychiatric Association, Gender Dysphoria Diagnosis: History, *https://www.psychiatry.org/psychiatrists/diversity/education/transgender-and-gender-nonconforming-patients/gender-dysphoria-diagnosis* (last visited July 22, 2026).

[95] 29 CFR 1630.2(h)(1).

their rights and obligations under existing law. Guidance would also be insufficient to resolve the confusion. Issuing guidance would create conflicting non-binding authority and potentially leave the confusion unresolved. As noted above, repealing the entire rule would be a disproportionate response to the issue of the status of gender dysphoria not resulting from physical impairments and would result in the loss of important protections for individuals with disabilities.

Comment: In response to the request for comments concerning alternatives to a proposed rule, one commenter said that a proposed rule is appropriate because the alternatives are insufficient to clarify the confusion caused by the preamble language to the 2024 Final Rule.

Response: The Department also agrees that the alternatives to a full rulemaking with public comment would be insufficient to address the confusion and burdens caused by the preamble language in the 2024 Final Rule. As long as the regulation text at section 84.4(g) remains silent on whether gender dysphoria may be a covered disability, the Department is concerned that the public may believe that the Department enforces an incorrect legal interpretation of section 504.

Comment: One commenter suggested that because this rulemaking concerns a single issue that only arises from preamble language in the 2024 Final Rule, the Department should publish a request for information on the subject before engaging in rulemaking.

Response: While Congress gave the Department authority to interpret the non-discrimination requirements of the statute, the preamble to the 2024 Final Rule went beyond statutory limits when it interpreted the definition of disability in a manner that included a condition excluded by Congress. The Department is constrained by that statutory exclusion and believes that a request for information prior to rulemaking is not necessary. Furthermore, the Department believes that the notice-and-comment process has given adequate opportunity for public engagement. The Department received over 300 comments from the public and has evaluated and considered each comment.

Comments Offering Other Recommendations

Comments: Some commenters think that the Department should go beyond what it is proposing in this rulemaking. One commenter requested that the Department ''fix the physical impairment loophole,'' by stating that gender dysphoria is not caused by a physical impairment.

Response: The Department does not intend to ignore or challenge the statutory text of 29 U.S.C. 705(20)(F) and 42 U.S.C. 12211(b)(1) by claiming that gender identity disorders or gender dysphoria may not be caused by physical impairments. Congress made clear that gender identity disorders not caused by physical impairments are excluded from the definition of disability in section 504. Logically, this means that gender identity disorders caused by physical impairments may be considered disabilities under section 504, provided the other requirements of the definition of disability are satisfied. This rulemaking does not alter that basic understanding that has been in place since 1990.

Comments: Some commenters recommended that this rule or any future regulation on section 504 should allow recipients to only provide care within the bounds of their religious beliefs.

Response: This comment is beyond the scope of this rulemaking. There are numerous statutory protections [96] for health care providers that deal with instances in which a specific requested treatment would violate their conscience or religious beliefs.

Comments: Some commenters recommended that the Department also provide an expanded definition for ''transsexualism'' as used in the statute similar to the definition from the DSM–III–R.

Response: The Department thanks the commenter for the recommendation, but the recommendation is beyond the scope of this rulemaking. This rulemaking only intends to address the confusion caused by the 2024 Final Rule preamble which dealt with gender identity disorders and gender dysphoria.

Comments: One commenter requested that the Department provide extensive guidance on how the exclusions to the definition of disability would be applied in practice, how complaint investigations would be conducted when gender dysphoria is present alongside other disabilities, how the Department would ensure that people with gender dysphoria were not harmed, and how the Department would communicate any changes to recipients.

Response: Because this rulemaking only clarifies that gender dysphoria fits into a long-standing statutory exclusion, it is not necessary for the Department to pursue such guidance at this time.

Other Comments

Comments: Some commenters expressed their belief that this rulemaking would not save money but rather waste it by spending time and effort on a rulemaking that will likely be successfully challenged in court.

Response: The Department is undertaking this rulemaking because it believes that the 2024 Final Rule preamble misinterpreted the underlying statute and extended disability nondiscrimination protections to individuals beyond the scope of the statute. This rulemaking is intended to correct that ambiguity and avoid future legal challenges that would waste the time and resources of all involved.

Comments: Many commenters expressed their general beliefs concerning gender dysphoria and individuals who identify as transgender. For example, some commenters stated that there are only two sexes, there is no immutable incongruent gender identity—only social constructs that make people believe they are transgender, and that sex-rejecting medications and surgeries themselves cause individuals to be physically disabled. Some commenters stated that any rulemaking that the Department does concerning section 504 should include an exemption for religious beliefs, especially if gender dysphoria is considered a disability under section 504.

Response: This rulemaking takes no position beyond interpreting the statutory exclusions to the definition of disability under section 504, including gender identity disorders not resulting from physical impairments and gender dysphoria not resulting from a physical impairment.

Concerning religious exemptions, the Department appreciates this suggestion. The Department does note that Federal laws prohibit certain providers and patients from being forced to perform or submit to certain procedures due to their sincerely held beliefs, such as the Church Amendments,[97] Public Health Service Act § 245 (the Coats-Snowe Amendment),[98] and the Weldon Amendment.[99]

Comments: Some commenters stated that excluding people with gender dysphoria not resulting from physical impairments from disability protections

[96] *See, e.g.,* Church Amendments (42 U.S.C. 300a–7, *et seq.*); Coats-Snowe Amendment (42 U.S.C. 238n).

[97] 42 U.S.C. 300a–7, *et seq.*

[98] 42 U.S.C. 238n.

[99] Consolidated Appropriations Act, 2026, Public Law 119–75, div. B, tit. V, § 507(d), 140 Stat.173, 317 (Feb. 3, 2026).

will not help people with other disabilities. Rather, they claim that it will inaccurately limit the pool of individuals with disabilities and hamper disability rights efforts. Some commenters also stated that they believed that children with gender dysphoria not resulting from physical impairments in the child welfare system need to be protected from organizations and foster parents that will harm them.

Response: The Department believes that by clarifying the statutory limitations of the definition of disability, the Department will be able to focus more on statutorily accurate allegations of discrimination while covered entities will not have to update policies or procedures or make reasonable modifications for individuals with conditions that are not disabilities under section 504. This will result in more resources being available for individuals with disabilities covered by section 504.

The Department agrees that individuals with disabilities, including children in foster care systems that are covered by Federal nondiscrimination laws, are entitled to appropriate protections. The Department has and will continue to enforce all applicable nondiscrimination laws as written, to ensure that children in the child welfare system are not discriminated against.

Executive Order 12866 Determination

Comments: Some commenters requested additional information as to how this rule would interact with other Federal nondiscrimination laws, such as Title IX of the Education Amendments of 1972.

Response: This rulemaking deals with the definition of disability under the Department's section 504 implementing regulation for recipients of Departmental financial assistance. This rulemaking does not impact Title IX, which prohibits discrimination based on sex in education programs and activities.

Comments on Potential Federalism Implications

Comments: Several commenters expressed concern about conflicting state regulations that consider gender dysphoria to be a disability or a protected class under a different reasoning. They argue that compliance with this rule will force entities to violate their applicable state laws and that this rulemaking violates state sovereignty. Some commenters were concerned about potential costs and burdens that this rule imposes on states and counties, like training and compliance costs as well as burdens on state and county safety nets if individuals who identify as transgender are denied allegedly medically necessary treatment.

Response: In instances in which a state law contradicts Federal nondiscrimination law, the Federal law will usually supersede the conflicting state law.[100] The Department believes that states and counties will realize few, if any, costs from this rulemaking Concerning health care and safety net costs, there is no indication that the 2024 Final Rule preamble language led to any additional provision of procedures related to gender dysphoria, so there is no indication that a reversion to the correct interpretation of the law would cause any decrease in such procedures or associated harms.

Comments: Some commenters stated that the 2024 Final Rule took away control from the states by preempting decisions they believed should remain with states. Such decisions included child welfare custody, placement, and termination decisions, which they believed would be affected if they were required to consider gender dysphoria a disability under section 504. The commenters also believe that if states were required to provide reasonable modifications in situations where gender dysphoria not resulting from physical impairments amounted to a disability under section 504, there would be additional issues they have not yet seen or considered.

Response: The Department is obliged to accurately interpret statutory language and enforce those statutes through regulations, including section 504. When covered entities, including states, violate the requirements of section 504, the Federal government is obligated to enforce the nondiscrimination law through a variety of means. While the Department agrees in this instance that the preamble language to the 2024 Final Rule incorrectly applied the law by misinterpreting the underlying statute, states and local governments that receive financial assistance from the Department are still required to comply with section 504. When child welfare custody, placement, and termination decisions result in discrimination, such as when a child is removed from the custody of a parent with a disability not because the parent has abused or neglected the child but solely because of the child welfare agency's stereotypes and biases concerning parents with disabilities, the child welfare agency has violated Federal civil rights laws. Concerns over what would constitute a reasonable modification for an individual with gender dysphoria not resulting from physical impairment are part of the confusion that this rulemaking is attempting to avoid.

[100] U.S. Const. art. VI, cl. 2.

IV. Executive Order 12866 and Related Executive Orders on Regulatory Review

Executive Order 12866 Determination

Pursuant to Executive Order 12866, this rulemaking has been designated as a significant regulatory action under subsection 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

Executive Order 12250 on Leadership and Coordination of Nondiscrimination

Pursuant to Executive Order 12250, the Attorney General has the responsibility to ''coordinate the implementation and enforcement by Executive agencies of . . . ''[a]ny other provision of Federal statutory law which provides, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.'' Executive Order 12250 at § 1–201(d), 45 FR 72995 (Nov. 2, 1980). The rule was reviewed and approved under Executive Order 12250.

Regulatory Impact Analysis Summary

As the Department noted in its proposed rule for this rulemaking, it believes that any costs associated with this rulemaking would be negligible. This is because this rulemaking will not require recipients to purchase new equipment, alter benefits, train employees, or change their practices in any way based on this clarification. Rather, recipients would merely need to ensure that they continue to recognize the definitions of disability and individual with a disability that have been part of the statute for decades. While the Department believes that this rulemaking will result in marked benefits, such as avoiding confusion among recipients and individuals, limiting potential litigation, and restoring confidence in the plain interpretation of statutory language, it has not been able to quantify such benefits in past rulemakings and cannot do so with any certainty.

The comments received in this rulemaking have not altered the Department's belief that this rulemaking will not result in additional costs for recipients or individuals. Some commenters expressed their beliefs that

this rulemaking may result in additional litigation from individuals or organizations challenging its legality, but the Department does not believe such speculative costs could be monetized with any level of accuracy. Every rulemaking, particularly rulemaking concerning politically sensitive subjects, has the potential to be challenged in court, and the Department declines to associate costs with defending such legal challenges here.

The Department considered a single alternative to this rulemaking—foregoing rulemaking and relying on the 2025 Notice [101] to communicate that the preamble language of the 2024 Final Rule does not have the force or effect of law and cannot be enforced. Under this alternative, no further rulemaking would have been needed; HHS would have amplified the April 2025 notice through its listservs and the media in lieu of staff time spent developing the proposed rule, examining public comments, and formulating this final rule. This alternative was not pursued because it likely would not have been as effective at eliminating confusion from the 2024 Final Rule preamble language. The 2025 Notice, while public, is not linked to the Code of Federal Regulations web page for 45 CFR pt. 84 that implements section 504 to HHS recipients and contains the terms ''disability,'' ''individual with a disability,'' and their exclusions, among other provisions. The 2025 Notice is also not linked to the 2024 Final Rule on the **Federal Register** website. Without a clear regulatory change from the Department, confusion would persist, generating possible downstream impacts from the lack of clarity.

Regulatory Flexibility Act—Small Entity Analysis

The Regulatory Flexibility Act (RFA), Public Law 96–354, applies to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b).

Because this rule clarifies limited aspects of the definitions of ''disability'' and ''individual with a disability'' under section 504, any associated costs to recipients, including small entities, is negligible. Recipients will not have to purchase new equipment, alter benefits, or change their practices in any way based on this clarification. The Department certifies that this rule will not have a significant effect on small entities.

[101] 90 FR 15412 (Apr. 11, 2025).

Executive Order 13132: Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on state and local governments or has federalism implications. The Department has determined that this rule does not impose such costs or have any federalism implications. The Department has addressed public comments asserting otherwise in part III of this final rule, Response to Public Comments on the Proposed Rule, under the subheading ''*Comments on Potential Federalism Implications.*''

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. ch. 3506; 5 CFR part 1320 appendix A.1), the Department has reviewed this rule and has determined that there are no new or modified collections of information contained therein.

Unfunded Mandates Reform Act

Section 4(2) of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1503(2), excludes from coverage under that Act any proposed or final Federal regulation that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' Accordingly, this rulemaking is not subject to the provisions of the UMRA.

Executive Order 14192: Deregulation

Under Executive Order 14192, Unleashing Prosperity Through Deregulation, executive agencies are required to limit the costs of planned regulations, including by repealing existing regulations for each newly promulgated regulation and/or prioritizing regulations with minimal costs or burdens. This rule will not impose new costs or burdens on recipients because it clarifies an ambiguity created by specific preamble language of the 2024 Final Rule that called into question whether gender dysphoria could be considered a disability.

List of Subjects in 45 CFR Part 84

Adoption and foster care, Civil rights, Childcare, Child welfare, Colleges and universities, Disabled, Discrimination, Equal access to justice, Federal financial assistance, Grant programs, Grant programs—health, Grant programs—social programs, Health, Health care, Health care access, Health facilities, Health programs and activities, Individuals with disabilities, Medical care, Nondiscrimination, Public health.

For the reasons stated in the preamble, the Department of Health and Human Services amends 45 CFR subtitle A, subchapter A, part 84 as set forth below:

PART 84—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 1. The authority citation for part 84 continues to read as follows:

Authority: 29 U.S.C. 794.

Subpart G is also issued under 21 U.S.C. 1174; 42 U.S.C. 4581.

■ 2. Amend § 84.4 by revising paragraph (g) to read as follows:

§ 84.4 Disability.

* * * * *

(g) *Exclusions.* The term ''disability'' does not include the conditions set forth at 29 U.S.C. 705(20)(F), including ''transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders'' under section 705(20)(F)(i). For the purpose of this part, the term ''gender identity disorders not resulting from physical impairments'' includes gender dysphoria not resulting from physical impairments.

Dated: October 29, 2026.

Robert F. Kennedy, Jr.,

Secretary, Department of Health and Human Services.

[FR Doc. 2026–22380 Filed 10–30–26; 11:15 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MB Docket No. 98–204; GN Docket No. 25–133; DA 26–1058; FR ID 374758]

Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies; Delete, Delete, Delete

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Media Bureau of the Federal Communications Commission (Commission) adopts an Order that removes a section of the Commission's Rules and references to that section to conform the