

request. Sources in Pennsylvania subject to PA Code Chapters 129.91 through 129.95 are not to send their RACT plan proposals directly to EPA. Under the CAA, SIP revision submissions in their entirety must be submitted by the State requesting that the SIP be revised. EPA will consider only the materials formally submitted by DEP in its SIP revision request and any comments submitted during the public comment period provided by EPA on its proposed rule when determining its final action to approve or disapprove a source-specific SIP revision submitted by DEP pursuant to PA Code Chapters 129.91 through 129.95.

G. The SIP submission by DEP must not include any materials that are considered "confidential business information" in nature or entitled to any proprietary treatment. Moreover, the DEP plan approvals and permits cannot include conditions that cite to the source's RACT Plan proposal where that proposal includes materials which the company has requested be treated as confidential and proprietary. No materials that are considered "confidential business information" in nature or entitled to any proprietary treatment are to be included in a SIP revision submittal because the materials that constitute SIP revisions are required to be made available to the public by both the State and EPA.

### III. EPA's Proposed Action

EPA has previously removed the limited status of its approval of Pennsylvania's SIP revisions that requires all major sources of VOC and NO<sub>x</sub> to implement RACT as it applies in the Pittsburgh and Philadelphia areas because EPA has approved all of the case-by-case RACT determinations for these areas. In this action, EPA is proposing to convert its limited approval of Pennsylvania's RACT regulation to full approval as it applies in the remainder of the Commonwealth because EPA has approved all of the case-by-case RACT determinations submitted by DEP such that there are no longer any such submissions pending before EPA. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve

state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule regarding Pennsylvania's VOC and NO<sub>x</sub> RACT regulations Chapters 129.91-129.95 as they apply in the remainder of the Commonwealth of Pennsylvania does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the Pennsylvania SIP is not approved to apply in Indian country, and EPA, therefore, notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide,

Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 14, 2008.

**William T. Wisniewski,**  
Acting Regional Administrator, Region III.  
[FR Doc. E8-19756 Filed 8-25-08; 8:45 am]  
**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2008-0603; FRL-8708-5]

### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Philadelphia County Reasonably Available Control Technology Under the 8-Hour Ozone National Ambient Air Quality Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This SIP revision pertains to the requirements in meeting the reasonably available control technology (RACT) under the 8-hour ozone national ambient air quality standard (NAAQS). These requirements are based on the certification that previously adopted RACT controls in Pennsylvania's SIP that were approved by EPA under the 1-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and that they continue to represent RACT for the 8-hour implementation purposes; the adoption of new or more stringent regulations that represent RACT control levels; and a negative declaration that certain categories of sources do not exist in Philadelphia County, Pennsylvania. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before September 25, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2008-0603 by one of the following methods:

A. [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.

B. E-mail: [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov).  
C. Mail: EPA-R03-OAR-2008-0603, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency,

Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

*D. Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R03-OAR-2008-0603. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at

[www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Department of Public Health, Air Management Services, 321

University Avenue, Philadelphia, Pennsylvania 19104.

**FOR FURTHER INFORMATION CONTACT:** Melissa Linden, (215) 814-2096, or by e-mail at [linden.melissa@epa.gov](mailto:linden.melissa@epa.gov).

**SUPPLEMENTARY INFORMATION:** On September 25, 2006, the Pennsylvania Department of Environmental Protection submitted a revision for Philadelphia County to its SIP that addresses the requirements of RACT under the 8-hour ozone NAAQS.

## I. Background

Ozone is formed in the atmosphere by photochemical reactions between volatile organic compounds (VOC), oxides of nitrogen (NO<sub>x</sub>) and carbon monoxide (CO) in the presence of sunlight. In order to reduce ozone concentrations in the ambient air, the CAA requires all nonattainment areas to apply control on VOC/NO<sub>x</sub> emission sources to achieve emission reductions. Among effective control measures, RACT controls are a major group for reducing VOC and NO<sub>x</sub> emissions from stationary sources.

RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761 at 53762, September 17, 1979). Section 182 of the CAA sets forth two separate RACT requirements for ozone nonattainment areas. The first requirement, contained in section 182(a)(2)(A) of the CAA, and referred to as RACT fix-up requires the correction of RACT rules for which EPA identified deficiencies before the CAA was amended in 1990. Philadelphia County has no deficiencies to correct under this section of the CAA. The second requirement, set forth in section 182(b)(2) of the CAA, applies to moderate (or worse) ozone nonattainment area as well as to marginal and attainment areas in ozone transport regions (OTRs) established pursuant to section 184 of the CAA, and requires these areas to implement RACT controls on all major VOC and NO<sub>x</sub> emission sources and on all sources and source categories covered by a control technique guideline (CTG) issued by EPA.

Under the 1-hour ozone NAAQS, Philadelphia County was designated part of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area located in an OTR. Therefore, the county was subject to RACT requirements under the 1-hour ozone standard. Pennsylvania has implemented numerous RACT controls

throughout the Commonwealth to meet the CAA RACT requirements. These RACT controls were promulgated in the Philadelphia Air Management Regulations Part V and Pennsylvania's Regulations in Title 25 Sections 129 and 145.

Under the 8-hour ozone NAAQS, Philadelphia County is part of the Philadelphia-Wilmington-Atlantic City moderate nonattainment area, and is therefore subject to the CAA requirements. Pennsylvania is required to submit to EPA a SIP revision that addresses how Philadelphia County meets the RACT requirements under the 8-hour ozone standard. The entire Commonwealth of Pennsylvania is also part of the OTR established under section 184 of the CAA.

EPA requires under the 8-hour ozone NAAQS that states meet the CAA RACT requirements, either through a certification that previously adopted RACT controls in their SIP revisions approved by EPA under the 1-hour ozone NAAQS represent adequate RACT control levels for 8-hour attainment purposes, or through the adoption of new or more stringent regulations that represent RACT control levels. A certification must be accompanied by appropriate supporting information such as consideration of information received during the public comment period and consideration of new data. This information may supplement existing RACT guidance documents that were developed for the 1-hour standard, such that the State's SIP accurately reflects RACTs for the 8-hour ozone standard based on the current availability of technically and economically feasible controls. Adoption of new RACT regulations will occur when states have new stationary sources not covered by existing RACT regulations, or when new data or technical information indicates that a previously adopted RACT measure does not represent a newly available RACT control level. Another 8-hour ozone NAAQS requirement for RACT is to submit a negative declaration that there are no CTG or non-CTG major sources of VOC and NO<sub>x</sub> emissions within Philadelphia County.

## II. Summary of SIP Revision

Pennsylvania's SIP revision contains the requirements of RACT set forth by the CAA under the 8-hour ozone NAAQS. Pennsylvania's SIP revision satisfies the 8-hour RACT requirements through (1) certification that previously adopted RACT controls in Pennsylvania's SIP that were approved by EPA under the 1-hour ozone NAAQS are based on the currently available

technically and economically feasible controls, and continues to represent RACT for the 8-hour implementation purposes; (2) the adoption of federally enforceable permits that represent RACT control levels; and (3) a negative declaration that certain CTG or non-CTG

major sources of VOC and NO<sub>x</sub> sources do not exist in Philadelphia County.

*VOC RACT Controls*

Philadelphia Air Management Regulations Part V and Pennsylvania Regulations Title 25 Section 129

contains Philadelphia County's VOC RACT controls that were implemented and approved in the Pennsylvania SIP under the 1-hour ozone NAAQS. Table 1 lists Philadelphia County's VOC RACT controls.

TABLE 1—PHILADELPHIA COUNTY'S VOC RACT CONTROLS

RACT document basis	Regulation	Date published	Federal Register citation
CTG: Control of VOC Emissions from Petroleum Liquid Storage in External Floating Roof Tanks.	Air Management Regulations (AMR) V Section II. PA Title 25 Section 129.56 .....	05/31/1972 07/26/2000	37 FR 10842 65 FR 45920
CTG: Control of VOC Emissions from Storage of Petroleum Liquids in Fixed Roof Tanks.	PA Title 25 Section 129.57 .....	01/19/1983	48 FR 2319
CTG: Control of Refinery Vacuum Producing Systems, Wastewater Separators and Process Unit Turnarounds.	AMR V Section II .....	05/31/1972	37 FR 10842
CTG: Control of VOC Leaks from Petroleum Refinery Equipment .....	PA Title 25 Section 129.56 .....	07/26/2000	65 FR 45920
CTG: Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals.	PA Title 25 Section 129.57 .....	01/19/1983	48 FR 2319
CTG: Control of VOC Emissions from Bulk Gasoline Plants .....	AMR V Section III .....	05/31/1972	37 FR 10842
CTG: Control of VOC Leaks from Gasoline Tank Trucks and Vapor Collection Systems.	PA Title 25 Section 129.55 .....	01/19/1983	48 FR 2319
CTG: Design Criteria for Stage I Vapor Control Systems—Gasoline Service Stations.	AMR V Section IV .....	05/31/1972	37 FR 10842
CTG: Control of VOC Emissions from Solvent Metal Cleaning .....	PA Title 25 Section 129.58 .....	07/27/1984	49 FR 30183
Alternative Control Technology (ACT) Document—Halogenated Solvent Cleaners.	AMR V Section V .....	05/31/1972	37 FR 10842
CTG: Control of VOC from Use of Cutback Asphalt .....	PA Title 25 Section 129.59 .....	08/11/1992	57 FR 35777
CTG: Control of VOC Emissions from Manufacture of Pneumatic Rubber Tires.	PA Title 25 Section 129.62 .....	12/22/1994	59 FR 65971
CTG: Control of VOC Emissions from Manufacture of Synthesized Pharmaceutical Products.	PA Title 25 Section 129.60 .....	08/11/1992	57 FR 35777
CTG: Control of VOC Emissions from Large Petroleum Dry Cleaners	AMR V Section XIII .....	04/06/1993	58 FR 17778
CTG: Control of VOC Emissions from Existing Stationary Sources, Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks.	PA Title 25 Section 129.62 .....	12/22/1994	59 FR 65971
CTG: Control of VOC Emissions from Existing Stationary Sources, Volume III: Surface Coatings of Metal Furniture.	PA Title 25 Section 129.61 .....	08/11/1992	57 FR 35777
CTG: Control of VOC Emissions from Existing Stationary Sources, Volume IV: Surface Coating for Insulation of Magnet Wire.	AMR V Section VI .....	05/31/1972	37 FR 10842
CTG: Control of VOC Emissions from Existing Stationary Sources, Volume V: Surface Coating of Large Appliances.	PA Title 25 Section 129.63 .....	01/16/2003	68 FR 2208
CTG: Control of VOC Emissions from Existing Stationary Sources, Volume VI: Surface Coating of Miscellaneous Metal Parts and Products.	PA Title 25 Section 129.63 .....	01/16/2003	68 FR 2208
CTG: Control of VOC Emissions from Existing Stationary Sources, Volume VII: Graphic Arts—Rotogravure and Flexography.	PA Title 25 Section 129.64 .....	07/27/1984	49 FR 30183
CTG: Control of VOC Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins.	PA Title 25 Section 129.69 .....	12/22/1994	59 FR 65971
CTG: Control of VOC Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment.	AMR V Section XII .....	06/16/1993	58 FR 33200
Non-CTG RACT: An industry-specific RACT determination (CAA Section 182(b)(2)(c)).	PA Title 25 Section 129.68 .....	08/11/1992	57 FR 35777
CTG—Maximum Achievable Control Technology (MACT): Aerospace.	AMR V Section XI .....	04/12/1993	58 FR 19066
CTG—MACT: Wood Furniture .....	PA Title 25 Section 129.52 .....	07/20/2001	66 FR 37908
ACT: Automobile Body refinishing .....	PA Title 25 Section 129.52 .....	07/20/2001	66 FR 37908
	PA Title 25 Section 129.52 .....	07/20/2001	66 FR 37908
	PA Title 25 Section 129.52 .....	07/20/2001	66 FR 37908
	PA Title 25 Section 129.52 .....	07/20/2001	66 FR 37908
	PA Title 25 Section 129.67 .....	07/26/2000	65 FR 45920
	PA Title 25 Section 129.71 .....	12/22/1994	59 FR 65971
	PA Title 25 Section 129.71 .....	12/22/1994	59 FR 65971
	AMR V Section X .....	06/16/1993	58 FR 33192
	PA Title 25 Section 129.72 .....	12/22/1994	59 FR 65971
	PA Title 25 Section 129.91—129.95.	07/20/2001	66 FR 37908
	PA Title 25 Section 129.73 .....	06/25/2001	66 FR 33645
	PA Title 25 Section 129.101—129.107.	07/20/2001	66 FR 37908
	PA Title 25 Section 129.75 .....	08/14/2000	65 FR 49501
	AMR V Section VII—processing of Photochemically Reactive Materials.	05/31/1972	37 FR 10842
	AMR V Section VIII—Architectural Coatings.	05/31/1972	37 FR 10842

TABLE 1—PHILADELPHIA COUNTY’S VOC RACT CONTROLS—Continued

RACT document basis	Regulation	Date published	Federal Register citation
	AMR V Section IX—Disposal of Solvents.	05/31/1972	37 FR 10842
	PA Title 25 Section 129.65—Ethylene production plants.	11/14/2002	67 FR 68935
	AMR V Section I—Definitions .....	06/16/1993	58 FR 33200
	PA Title 25 Section 129.51—General.	06/25/2001	66 FR 33645

Philadelphia Air Management Services (AMS) submitted a negative declaration demonstrating that no surface coating of flat wood paneling

facilities exist in Philadelphia County. Philadelphia AMS submitted a list of federally enforceable permits for specific sources that are as stringent as

the CTG guidance issued by EPA. These case-by-case RACT determinations are found in Table 2.

TABLE 2—PHILADELPHIA COUNTY’S CASE-BY-CASE RACT DETERMINATIONS

RACT document basis	Facility name	Operating permit No.
CTG: Control of Volatile Organic Equipment Leaks from Natural Gas/Gasoline Processing Plants.	Philadelphia Gas Works .....	V95-042.
CTG/ACT: Shipbuilding/Repair .....	Sunoco Philadelphia Refinery .....	V95-038.
CTG: Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry.	Aker Philadelphia Shipyard .....	V01-006.
CTG: Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry.	Sunoco Chemicals .....	V95-047.
	Sunoco Chemicals .....	V95-047.

*NO<sub>x</sub> RACT Controls*

Philadelphia Air Management Regulations Part VII and Pennsylvania

Regulations Title 25 Sections 129 and 145 list NO<sub>x</sub> RACT controls that were implemented and approved into the Pennsylvania SIP under the 1-hour

ozone NAAQS. Table 3 lists Philadelphia County’s NO<sub>x</sub> RACT controls.

TABLE 3—PHILADELPHIA COUNTY’S NO<sub>x</sub> RACT CONTROLS

RACT document basis	Regulation	Date published	Federal Register citation
NO <sub>x</sub> RACT, CAA Section 182 (b)(2) and Section 182(f). NO <sub>x</sub> SIP Call .....	AMR VII Section II—Fuel Burning Equipment .....	01/14/1987	52 FR 1456
	AMR VII Section III—Nitric Acid Plants .....	05/14/1973	38 FR 12696
	AMR VII Section IV—Emissions Monitoring .....	05/14/1973	38 FR 12696
	PA Title 25 Sections 129.91–129.95 .....	07/20/2001	66 FR 37908
	PA Title 25 Sections 145.1–145.100 .....	08/21/2001	66 FR 43795
	PA Title 25 Sections 145.111–145.113 .....	07/14/2006	71 FR 40084
	PA Title 25 Sections 145.141–145.144 .....	07/14/2006	71 FR 40084

**III. Proposed Action**

EPA is proposing to approve the Pennsylvania SIP revision for Philadelphia County that addresses the requirements of RACT under the 8-hour ozone NAAQS. Pennsylvania submitted this SIP revision on September 25, 2006. This SIP revision is based on a combination of (1) certification that previously adopted RACT controls in Pennsylvania’s SIP that were approved by EPA under the 1-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and that they continue to

represent RACT for the 8-hour implementation purposes; (2) the adoption of federally enforceable permits that represent RACT control levels; and (3) the negative declaration that there are no CTG or non-CTG major sources of VOC and NO<sub>x</sub> emissions within Philadelphia County. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

**IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by

state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to the Philadelphia County RACT under the 8-hour ozone NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 18, 2008.

**William T. Wisniewski,**

*Acting Regional Administrator, Region III.*

[FR Doc. E8–19753 Filed 8–25–08; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Part 88

**RIN 0991–AB48**

#### Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices In Violation of Federal Law

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Health and Human Services proposes to promulgate regulations to ensure that Department funds do not support morally coercive or discriminatory practices or policies in violation of federal law, pursuant to the Church Amendments (42 U.S.C. 300a–7), Public Health Service (PHS) Act § 245 (42 U.S.C. 238n), and the Weldon Amendment (Consolidated Appropriations Act, 2008, Pub. L. 110–161, § 508(d), 121 Stat. 1844, 2209). This notice of proposed rulemaking proposes to define certain key terms. Furthermore, in order to ensure that recipients of Department funds know about their legal obligations under these nondiscrimination provisions, the Department proposes to require written certification by certain recipients that they will comply with all three statutes, as applicable.

**DATES:** Submit written or electronic comment on the regulations proposed by this document by September 25, 2008.

**ADDRESSES:** In commenting, please refer to “Provider Conscience Regulation”. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.Regulations.gov> or via e-mail to [consciencecomment@hhs.gov](mailto:consciencecomment@hhs.gov). To submit electronic comments to <http://www.Regulations.gov>, go to the Web site and click on the link “Comment or Submission” and enter the keywords “provider conscience”. (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address only: Office of Public Health and Science, Department of Health and Human Services, *Attention:* Brenda Destro, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 728E, Washington, DC 20201.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only: Office of Public Health and Science, Department of Health and Human Services, *Attention:* Brenda Destro, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 728E, Washington, DC 20201.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to the following address: Room 728E, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. (Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal Government Identification, commenters are encouraged to leave their comments in the mail drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain proof of filing by stamping in and retaining and extra copy of the documents being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

*Submitting Comments:* We welcome comments from the public on all issues set forth in this proposed rule to assist us in fully considering issues and developing policies. For all comments submitted, you should specify the subject as “Provider Conscience Regulation”.

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.Regulations.gov>. Click on the link “Comment or Submission” on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of