

§ 41.1 [Amended]

4. Newly designated § 41.1 is amended by removing the words "Health and Human Services" and inserting in their place "Justice."

5. Newly designated paragraph 41.3(a) is revised to read as follows:

§ 41.3 Definitions.

(a) "Executive Order" means Executive Order 12250, titled "Leadership and Coordination of Nondiscrimination Laws," issued November 2, 1980.

§ 41.4 [Amended]

6. Newly designated paragraph 41.4(b) is amended by removing the words "Director of the Office for Civil Rights, HHS" and inserting in their place "Assistant Attorney General, Civil Rights Division, Department of Justice."

§ 41.55 [Amended]

7. Newly designated § 41.55 is amended by removing the reference to "45 CFR 84.41" and inserting in its place "28 CFR 42.513."

Dated: August 4, 1981.

William French Smith,
Attorney General.

[FR Doc. 81-23325 Filed 8-10-81; 8:45 am]

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28 CFR Part 41

Nondiscrimination on the Basis of Handicap in Federally Assisted Programs—Suspension of Guidelines With Respect to Mass Transportation

AGENCY: Department of Justice.

ACTION: Suspension of guidelines and request for comments.

SUMMARY: The Department of Justice is suspending its guidelines for prohibiting discrimination on the basis of handicap in transportation programs and activities receiving Federal financial assistance. This action affects guidelines issued in 1978 by the Department of Health, Education, and Welfare which were transferred to the Department of Justice by Executive Order 12250. The guidelines currently require that all transportation systems receiving Federal financial assistance be made accessible to handicapped persons, including wheelchair users, within a reasonable and definite period of time. A recent court decision has raised some question regarding the legal basis of the guidelines as they relate to mass transportation. In addition, the Department of Transportation has recently promulgated an interim final

rule revising its regulation governing access by handicapped persons to transportation systems receiving Federal financial assistance. Suspension of the Department of Justice's guidelines will facilitate reconsideration of those guidelines and will ensure that the Department of Transportation's rule is not inconsistent with the coordination guidelines issued by the Department of Justice pursuant to Executive Order 12250.

DATES: This suspension is effective on August 11, 1981. To be assured of consideration, comments must be in writing and must be submitted on or before October 13, 1981.

ADDRESSES: Comments regarding the Justice Department's planned revision of its guidelines may be mailed to James P. Turner, Acting Assistant Attorney General, Civil Rights Division, United States Department of Justice, Washington, D.C. 20530. Attention: Stewart B. Oneglia. Comments received may be inspected at Room 408, 521 12th Street, N.W., Washington, D.C. 20004 between 9:00 A.M. and 5:30 P.M. Monday through Friday, except on Federal holidays. Persons wishing to have receipt of comments acknowledged must send a stamped, self-addressed post card with their comments. The docket clerk will return those post cards when the comments are docketed.

FOR FURTHER INFORMATION CONTACT: Stewart B. Oneglia, Chief, Coordination and Review Section, Civil Rights Division, United States Department of Justice, Washington, D.C. 20004, phone: (202) 724-6757. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance. Executive Order 11914 authorized the Department of Health, Education, and Welfare (HEW) to coordinate enforcement of Section 504. This authority was later transferred to the Department of Health and Human Services (HHS). On November 2, 1980, this authority was transferred to the Department of Justice by Executive Order 12250 (45 FR 72995, November 4, 1980; 3 CFR, 1981 Comp., p. 298). E.O. 12250 provides that the HEW (later HHS) guidelines "shall be deemed to have been issued by the Attorney General pursuant to this Order and shall continue in effect until revoked or modified by the Attorney General." (Section 1-502.)

On April 30, 1978, the Department of Transportation (DOT) issued regulations implementing, *inter alia*, Section 504 (41

FR 18234 *et seq.*). Those regulations required recipients providing transportation services to make special efforts to meet the transportation needs of handicapped persons.

On January 13, 1978, HEW issued its Section 504 guidelines (43 FR 2132 *et seq.*, 45 CFR Part 85). Those guidelines required recipients to make all programs and activities accessible to handicapped persons within a reasonable and definite period. The guidelines were redesignated 28 CFR Part 41 by final rule published elsewhere in this issue.

On May 31, 1979, DOT issued a regulation, pursuant, *inter alia*, to Section 504 and the HEW guidelines, requiring recipients which provide federally assisted transportation services to make each mode of transportation provided accessible to handicapped persons, including wheelchair users (44 FR 31442 *et seq.*, 49 CFR Part 27).

The Presidential Task Force on Regulatory Relief and the Department of Transportation requested that the Department of Justice revise the HEW guidelines to be consistent with the Administration's policy of reducing regulatory burdens and increasing local control over local programs.

On May 26, 1981, the Court of Appeals for the District of Columbia Circuit entered its opinion in *American Public Transit Association v. Lewis*, No. 79-1697 (D.C. Cir.). The Court held that DOT's regulation exceeded its authority under Section 504, and remanded the case to the District Court for a determination of whether authority for the regulation might be found in some other statute. Because DOT's regulation was issued pursuant to the HEW guidelines, the decision raised some question as to the legal basis of guidelines as they relate to mass transportation.

On July 20, 1981, DOT issued an interim final rule revising its 1979 regulation to provide for greater local control over transportation decisions (46 FR 37488, July 20, 1981). A question existed whether this revised regulation was in technical compliance with the existing guidelines. However, the Department of Justice advised DOT that its interim final rule was proper in light of the decision in *American Public Transit Association v. Lewis* and the fact that the Justice Department intended to suspend the guidelines as they related to mass transportation. The suspension of the guidelines effective today eliminates any technical noncompliance of DOT's interim final rule with the requirements of the guidelines.

The Department of Justice will consider whether the provisions of the guidelines applicable to mass transportation services should be replaced by a revised guideline relating to transportation services, and is today requesting public comment on that question. Until such a revised guideline is issued, the Department of Justice will review proposed regulations relating to such services on a case-by-case.

Because this action is a suspension of application of a rule, and because there is involved a matter relating to grants, benefits, or contracts, the Department of Justice has determined that the suspension shall be effective upon publication. Because this action is a suspension of the application of an existing rule, the Department of Justice has determined that it is not a major rule as defined by Section 1(b) of E.O. 12291. For the same reason no environmental impact statement is required, and no regulatory flexibility analysis is required.

Accordingly, under the authority vested in me as Attorney General by E.O. 12250, application of Part 41 of Title 28 of the Code of Federal Regulations to mass transportation programs and activities receiving Federal financial assistance is hereby suspended.

Dated: August 4, 1981.

William French Smith,
Attorney General.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

(A-1-FRL 1893-2)

Approval and Promulgation of Implementation Plans; Revision to the Massachusetts State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a revision to the Massachusetts State Implementation Plan (SIP) submitted by the Massachusetts Department of Environmental Quality Engineering on November 25, 1980 and proposed for approval by EPA on April 28, 1981 (46 FR 23768). This revision will relax Regulation 310 CMR 7.05(1)(d)(2) for a thirty (30) month period to allow Unit 7 of Boston Edison's Mystic Generating Station in Everett, Massachusetts, to burn up to 2.2% sulfur content residual

oil. This variance will provide a significant fuel cost saving to the Company and therefore also to its customers. Two public comments were received on the proposed rulemaking.

DATE: August 11, 1981.

ADDRESSES: Copies of the Massachusetts submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460; the Division of Air Pollution Control, One Winter Street, Boston, Massachusetts 02110 and the Office of the Federal Register, 1180 L Street, N.W., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Brian Hennessey, Air Branch, EPA Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203, (617) 223-5609.

SUPPLEMENTARY INFORMATION: On April 28, 1981, EPA proposed approval in the Federal Register (46 FR 23768) of a variance to Massachusetts' SIP submitted to EPA on November 25, 1980, by the Commissioner of the Massachusetts Department of Environmental Quality Engineering (DEQE). The SIP revision, which EPA is approving today, represents a variance approved by DEQE pursuant to 310 CMR 7.50 of the Regulations for the Control of Air Pollution in the Metropolitan Boston Air Pollution Control District. The variance, which would allow the burning of up to 2.2% sulfur content residual oil instead of the present maximum of 1%, applies to Unit 7 at Boston Edison's Mystic Generating Station in Everett, Massachusetts.

The rationale for EPA's approval and the effect on air quality resulting from this action were fully described in the Notice of Proposed Rulemaking cited above and they will not be restated here.

EPA received two comments, both of which were fully supportive of EPA's proposed approval. Each commenter cited the substantial annual savings the purchase of higher sulfur content fuel would represent (approximately \$25 million) and noted that the Company's customers would be the beneficiaries of such an action.

Final Action

EPA is approving a variance to Regulation 310 CMR 7.05(1)(d)(2), for a 30-month period commencing upon publication of this Notice, allowing Unit 7 of Boston Edison's Mystic Generating

Station in Everett, Massachusetts to burn up to 2.2% sulfur content residual oil.

After evaluation of the state's submittal, the Administrator has determined that the Massachusetts revision meets the requirements of the Clean Air Act and 40 CFR Part 51. Accordingly, this revision is approved as a revision to the Massachusetts State Implementation Plan.

Pursuant to the provisions of 5 U.S.C. 605(b) I certify that this regulation will not have a significant economic impact on a substantial number of small entities. The attached rule constitutes a SIP approval under Sections 110 and 172 of the Clean Air Act. This action only approves state actions and imposes no new requirements. In addition, this action only applies to one facility.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirements of a Regulatory Impact Analysis. This regulation is not Major because it only approves state actions and it imposes no new regulatory requirements.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's Notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

(Sec. 110(a) of the Clean Air Act, as amended, 42 U.S.C. 7410 and 7601)

Dated: August 5, 1981.

Anne M. Gorsuch,
Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Massachusetts was approved by the Director of the Federal Register on July 1, 1980.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. Section 52.1120, paragraph (c) is amended by adding subparagraph (38) as follows:

§ 52.1120 Identification of plan.

* * *

(c) * * *

(38) A variance of Regulation 310 CMR 7.05(1)(d)(2) "Sulfur Control of Fuels and Control Thereof" for the Metropolitan Boston Air Pollution Control District, submitted on November 25, 1980, by the Commissioner of the Massachusetts Department of Environmental Quality Engineering.

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[SW-7-FRL-1895-2]

40 CFR Part 123

Iowa; Interim Authorization, Phase I, Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Approval of amendment to previously authorized State program.

SUMMARY: The Environmental Protection Agency is approving changes to the Phase I Interim Authorization in Iowa. The changes are based on two modifications in the Iowa hazardous waste management program that have been submitted to the EPA by the Iowa Department of Environmental Quality (IDEQ).

The first of these modifications removes a categorical exclusion of sewage sludge generated by publicly-owned treatment works (POTW's) from regulation as a hazardous waste in Iowa. The second modification includes amendments to Iowa regulations (Chapter 45, Iowa Administrative Code) adopted by the State on April 20, 1981, which became effective July 23, 1981. Through this second modification the State has now adopted all relevant amendments to the Federal regulations by reference through January 23, 1981. A main goal of the Iowa amendments was to improve consistency with Federal rules and to prepare for submittal of a Phase II application.

EFFECTIVE DATE: July 23, 1981.

FOR FURTHER INFORMATION CONTACT: Robert L. Morby, Chief, Hazardous Materials Branch, U.S. EPA, Region VII, 324 East 11th Street, Kansas City, Missouri 64106, 816/374-3307.

SUPPLEMENTARY INFORMATION: The Iowa Department of Environmental Quality (IDEQ) received interim authorization to operate its hazardous waste management program in lieu of Phase I of the Federal program on January 26, 1981. The Iowa application for Phase I interim authorization was based on Federal regulations as promulgated May 19, 1980.

Both modifications to Iowa's program bring that program into further equivalence with the corresponding Federal program. The IDEQ held formal public comment periods on both changes prior to State adoption.

The federally authorized Phase I hazardous waste management program in Iowa is now modified at two points. The categorical exclusion of sewage sludge generated by POTW's from regulation as a hazardous waste in Iowa has now been eliminated. Additionally, the State has adopted by reference all relevant amendments to Phase I Federal hazardous waste management regulations at 40 CFR 261 through 265 as promulgated through January 23, 1981. All such regulations excluding those of January 12, 1981 (46 FR 2848-2888) and January 23, 1981 (46 FR 7678-7683), which are a part of the Phase II Federal program, are now a part of the federally authorized Phase I program in Iowa.

Iowa's enabling legislation for the development of a hazardous waste management program initially included a definition for hazardous waste virtually synonymous with the definition found in RCRA as amended, with one exception. The Iowa legislation categorically excluded sewage sludge from POTW's from consideration as hazardous wastes (Chapter 111, Section (2)"b"(2) of the Iowa Hazardous Waste Management Act, 1979 Session, 68th General Assembly). A similar categorical exclusion was not found in the Federal statute or regulations. In granting Phase I interim authorization the State and EPA agreed that the POTW sewage sludge exclusion would be removed. Failure of the State Legislature to remove the exemption by June 30, 1981, would have been justification for immediate withdrawal of the State Interim Authorization for Phase I unless the State demonstrated to EPA's satisfaction that no sewage sludge falling within the exemption was hazardous waste in accordance with the 40 CFR, Part 261 identification and listing criteria.

The 69th General Assembly of the State of Iowa passed hazardous waste management legislation which was signed into law on May 14, 1981, by the Governor of Iowa and which became effective on July 1, 1981. A portion of this legislation removed the sewage sludge exclusion by striking the exclusion (Section 455B.130(2)"b"(2), Code of Iowa, 1981) from State law. As a result of this legislative action, the State can now regulate POTW-generated sludge as a hazardous waste. An addendum has been added to the State's Phase I interim authorization application

regarding this issue. Today's action makes that amendment part of the Phase I program the State is authorized to operate in lieu of the Federal program.

In developing a comprehensive set of regulations to protect human health and the environment from the improper management of hazardous wastes, the State of Iowa adopted Federal hazardous waste management regulations at 40 CFR Parts 261 through 265 by reference as published on May 19, 1981 (See Chapter 45, Hazardous Wastes, IAC). The May 19, 1980 (45 FR 33063) Federal regulations contained the elements of Phase I of the Federal hazardous waste management program. On January 26, 1981, the State received interim authorization to operate its hazardous waste management program in lieu of Phase I of the Federal program.

Since initial promulgation on May 19, 1980, the Federal regulations at 40 CFR Parts 261 through 265 have been amended on several occasions. On April 20, 1981, the State adopted the amendments to Federal regulations at 40 CFR Parts 261 through 265 by reference as published through January 23, 1981. The adopted amendments will become effective on July 23, 1981. The State adopted these revisions to improve consistency with the Federal rules and to prepare for Iowa's Phase II interim authorization application. The State submitted an addendum to its Phase I interim authorization application to EPA to incorporate these amendments into its authorized Phase I program. This addendum has been accepted by EPA and included in the Iowa Phase I interim authorization.

It should be noted that in adopting Federal hazardous waste management regulations through January 23, 1981, by reference, the State has adopted regulations corresponding to Phase II, Components A and B of the Federal program. Phase II, Components A and B of the Federal program consist of regulations published in the *Federal Register* January 12, 1981 (46 FR 2802) and January 23, 1981 (46 FR 7666), respectively. The Environmental Protection Agency will continue to operate Phase II of the Federal program until the State applies for and receives Phase II interim authorization. As a result, Federal regulations published on January 12, 1980 (46 FR 2802) and January 23, 1981 (46 FR 7666) have not been incorporated into the authorized Phase I program in Iowa and are not considered a part of this approval. The State and EPA will operate Phase II programs in Iowa until the State applies for and receives Phase II interim authorization.