

Dated: December 13, 1999.

Margo T. Oge,

Director, Office of Mobile Sources.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 243

[FRL 6505-7]

RIN 2050-AE66

Revisions to Guidelines for the Storage and Collection of Residential, Commercial, and Institutional Solid Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to revise Guidelines for the Storage and Collection of Residential, Commercial, and Institutional Solid Waste through incorporation by reference of new voluntary consensus standards from the American National Standards Institute (ANSI). We are proposing this revision in response to a petition for rulemaking submitted by the Waste Equipment Technology Association requesting the Agency to update the references to ANSI standards. This proposed revision would assure that the Guidelines include references to the most current national safety standards.

In the final rules Section of today's **Federal Register**, we are promulgating this amendment as a final rule without a prior proposal because we view this as a noncontroversial action that encourages the use of voluntary consensus standards. Thus, we anticipate no adverse comments. A detailed rationale for the amendment is set forth in the preamble to the accompanying direct final rule. If no adverse comments are received in response to this action, we plan no further action regarding this proposed rule as the accompanying direct final rule will be effective. If we receive relevant adverse comments, we will withdraw the final rule and we will address public comments received a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received on or before January 18, 2000. A relevant adverse comment will be considered to be any comment substantively criticizing the proposal on

a basis not already provided to EPA in comment.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F-99-COLF-FFFFF to: (1) If using regular US Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460-0002, or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. Comments may also be submitted electronically through the Internet to: rcra-docket@epa.gov. Comments in electronic format should also be identified by the docket number F-99-COLF-FFFFF and must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460-0002.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703 603-9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost \$0.15/page. The index and some supporting materials are available electronically. See the "Supplementary Information" section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800 424-9346 or TDD 800 553-7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412-9810 or TDD 703 412-3323.

For more detailed information on specific aspects of this rulemaking, contact Dwight Hlustick, Office of Solid Waste 5306W, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460-0002, 703 308-8647, hlustick.dwight@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The index for the supporting materials is available

on the Internet at <http://www.epa.gov/epaoswer/non-hw/muncpl/equip/>.

The following supporting materials are available for viewing in the RCRA Information Center (RIC):

Petition for Rulemaking—Proposed Modification to the Requirements and Recommended Procedures for Solid Waste Collection Equipment (40 CFR Part 243), submitted to Robert Dellinger and Larry Starfield (US EPA), submitted from Waste Equipment Technology Association, March 24, 1997.

Mobile Refuse Collection and Compaction Equipment—Safety Requirements, 1992, American National Standards Institute, ANSI Z245.1-1992.

Stationary Compactors—Safety Requirements, 1997, American National Standards Institute, ANSI Z245.2-1997.

Waste Containers—Safety Requirements, 1994, American National Standards Institute, ANSI Z245.30-1994.

Waste Containers—Compatibility Dimensions, 1996, American National Standards Institute, ANSI Z245.60-1996.

You can find these materials at the official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** or in a response to comments document placed in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

Regulated Entities. Entities potentially affected by this action are public or private owners or operators of solid waste collection and transport equipment. Affected categories and entities include the following.

Category	Examples of affected entities
Federal government ..	Agencies procuring waste services.
Industry	Owners or operators of solid waste collection services.
Municipal and tribal governments.	Owners or operators of solid waste collection services.

This table is a guide for readers that describes which entities are likely to be affected by this action. It lists the types of entities EPA is now aware could potentially be impacted by today's action. It is possible that other types of entities not listed in the table could also be affected. To determine whether you would be impacted by this action, you should carefully examine the applicability criteria. If you have questions about whether this action applies to a particular facility, please consult Mr. Dwight Hlustick, U. S. Environmental Protection Agency, Office of Solid Waste (5306W), 401 M Street, SW, Washington, DC 20460, (703) 308-8647, HLUSTICK.DWIGHT@EPAMAIL.EPA.GOV

Preamble Outline

- I. Under what authority is EPA proposing this rule?
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- IV. How does this proposed rule comply with applicable statutes and executive orders?
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 - H. National Technology Transfer and Advancement Act of 1995
 - I. Executive Order 12898: Environmental Justice
 - J. Executive Order 12088 (Compliance of Federal Agencies with the Solid Waste Disposal Act):

I. Under What Authority Is EPA Proposing This Rule?

The Agency is proposing these guidelines under the authority of Sections 1008(a)(3), 2002(a)(1), and 4004(a) of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6907(a)(3), 6912(a)(1), and 6944(a).

II. What Is the Background for This Proposed Rule?

EPA promulgated the Part 243—Guidelines for the Storage and Collection of Residential, Commercial, and Institutional Solid Waste in 1976. In 40 CFR 243.202-1(d), these guidelines referenced safety standards that had been established as consensus standards. The reference was to American National Standards Institute (ANSI) standard Z245.1—Safety Standards for Refuse Collection Equipment.

ANSI's current policy is to revise each standard every five years. This means that the safety standards referenced in 40 CFR 243.202-1(d) have been revised since 1976.

The original safety standard referenced in the 1976 guideline has been expanded in scope. In 1976, ANSI Z245.1 covered the following types of collection equipment;

- (1) Rear-loading compaction equipment,
- (2) Side-loading compaction equipment,
- (3) Front-loading compaction equipment,
- (4) Tilt-frame equipment,
- (5) Hoist-type equipment,
- (6) Satellite vehicles,
- (7) Special collection compaction equipment, and
- (8) Stationary compaction equipment.

Now Z245.1 has evolved into the following series of four separate standards.

- (1) Z245.1—Mobile Refuse Collection and Compaction Equipment—Safety Requirements;
 - a. Front-loading equipment,
 - b. Rear-loading equipment,
 - c. Satellite vehicles
 - d. Side-loading equipment,
 - e. Tilt-frame and hoist-type equipment,
 - f. Mechanized container collecting vehicles,
 - g. Recycling vehicles, and
 - h. Transfer trailers;
- (2) Z245.2—Stationary Compactors—Safety Requirements;
- (3) Z245.3—Waste Containers—Safety Requirements; and
- (4) Z245.6—Waste Containers—Compatibility Dimensions.

In this notice, EPA is proposing to revise the Part 243 guidelines to incorporate the above four standards. Each type of equipment covered in the original guideline would still be covered in these proposed revisions. In addition, EPA has proposed to add voluntary consensus standards for waste containers which did not exist at the time of the original rulemaking.

The waste container standards were added because waste containers are an integral part of most waste collection systems.

The petitioners also requested that balers be included in this regulation. Although they are an important part of some waste collection systems, they are not an integral part of many waste collection systems and they were not included in the original regulation. There may also be some question whether balers should be considered part of a waste collection system. Therefore, EPA is not including

standards for balers in this proposed rule.

III. What Does This Proposed Rule Do?

Overview of This Proposed Rule

This proposed rule would change three sections; §§ 243.100, 243.200-1, and 243.202-1. The changes are to be made through incorporation by reference. All of the proposed changes are to be made in the "Requirements" sections of the guideline. "Requirements" are minimum levels of performance that solid waste collection operations are required to meet. These guidelines are mandatory for Federal agencies and recommended to State, interstate, regional, and local governments for their activities.

Specific Changes Proposed

The proposed rule would change § 243.100 paragraphs (c) and (g) update references to an Executive Order. The current regulations refer to Executive Order 11752. That Executive Order would be replaced by Executive Order 12088. Today's proposed rule would change the text to refer to the new Executive Order 12088.

The proposed changes to § 243.200-1 would add a new paragraph (e). The new paragraph (e) adds the Safety Requirements and Compatibility Dimensions to the Waste Containers requirement of the guidelines. These guidelines address requirements for waste containers used for storage of solid waste and for materials that have been separated for the purpose of recycling.

The proposed change to § 243.202-1 would update the safety requirements for both mobile equipment and stationary compactors. The safety requirements for mobile equipment are updated from the 1976 standards to new standards finalized in 1992. The safety requirements for stationary compactors are updated from the 1976 standards to new standards finalized in 1997. The safety requirements are applicable to many types of solid waste collection vehicles and to stationary compactors.

Why EPA Wants To Make These Proposed Changes

We are making these changes at the request of Waste Equipment Technology Association to modify the ANSI standards because we believe the newer standards have a number of improved safety provisions. For example, the updated standards require the use of grab handles, riding steps, and slip resistant surfaces on loading platforms. Therefore, we believe, that if the industry follows these new standards,

the accident rate for solid waste collection industry should be reduced. These features should reduce risks both to people who collect solid waste as well as to the general public.

IV. How Does This Proposed Rule Comply With Applicable Statutes and Executive Orders?

A. Executive Order 12866 (OMB Review)

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and therefore subject to OMB review and the other provisions of the Executive Order. A significant regulatory action is defined by Executive Order 12866 as one that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

We have determined that this proposed rule would not be a significant regulatory action under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant adverse impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination.

The effect of this proposed rule is to encourage purchasers of waste

containers and solid waste collection vehicles to procure equipment that meets current industry voluntary consensus standards for safety. This proposed rule contains recommendations, not requirements, to State and local governments; therefore, it would not impose new burdens on small entities. Additionally, it is the Agency's understanding that all new solid waste collection equipment meets the current ANSI standards. As a result, this proposed rule would not impose new burdens on small entities.

Therefore, pursuant to 5 U.S.C. 605b, I hereby certify that this proposed rule will not have a significant adverse impact on a substantial number of small entities. Hence, this proposal does not require a regulatory flexibility analysis.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of regulatory actions on State, local, and Tribal governments, and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objective of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising

small governments on compliance with the regulatory requirements.

EPA's analysis of compliance with the Unfunded Mandates Reform Act of 1995 found that this proposed rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of UMRA. States are encouraged to participate in the development of voluntary consensus standards such as the ones referenced in this proposed rule.

D. Paperwork Reduction Act

Today's proposal is in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* We found that no information is being collected from the States, Federal Agencies, or industry for the existing rule and this proposal would not require the collection of any additional information. Therefore, we do not need to prepare an Information Collection Request (ICR).

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include

a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This is so because the incorporation of these revised ANSI standards into the Part 243 guidelines imposes no mandate on states or local governments. Instead, we provide the Part 243 guidelines only as recommendations for states, interstate, regional, and local governments. Part 243 sets forth requirements only for federal agencies. See 40 CFR section 431.100(c). Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of

regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule change would not significantly or uniquely affect the communities of Indian tribal governments. The impact of these revisions on tribal governments would be minimal and no different from any other governmental entity affected. These revisions do not require any new mandates for the tribes, but merely update existing voluntary standards. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it would not affect decisions involving the environmental health or safety risks to children.

H. National Technology Transfer and Advancement Act of 1995

Under Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), EPA is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical.

This proposed rule would comply with the requirements of the NTTAA because it utilizes voluntary consensus standards developed by the American National Standards Institute (ANSI). The ANSI is a voluntary consensus standards-setting body under the NTTAA.

I. Executive Order 12898: Environmental Justice

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority

Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

The Agency believes that today's proposed rule change which would revise voluntary consensus standards into guidelines for waste containers and solid waste collection vehicles would not have an adverse environmental or economic impact on any minority or low-income group, or on any other type of affected community since these standards would not significantly affect the location of any solid waste collection facility. These are updated safety standards to assure minimal safety requirements for waste collection equipment.

J. Executive Order 12088

(Compliance of Federal Agencies with the Solid Waste Disposal Act)

Executive Order 12088 requires each head of a Federal Agency to comply with standards issued under several laws, including the Solid Waste Disposal Act. Executive Order 12088 revoked an older Executive Order 11752. Part 243 included two outdated references to Executive Order 11752 at § 243.100(c) and (g). Today's proposed rule would replace the old references to Executive Order 11752 with Executive Order 12088.

List of Subjects in 40 CFR Part 243

Environmental protection, Government property, Incorporation by reference, Waste treatment and disposal.

Dated: December 3, 1999.

Carol M. Browner,
Administrator.

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