

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743
www.dir.ca.gov/oshsb



NOTICE OF PROPOSED MODIFICATIONS TO
CALIFORNIA CODE OF REGULATIONS

TITLE 8: Sections 4345, 4351, 4352, and 4354
of the General Industry Safety Orders

Stationary and Mobile Compaction Equipment and Balers

Pursuant to Government Code Section 11346.8(c), the Occupational Safety and Health Standards Board (Standards Board) gives notice of the opportunity to submit written comments on the above-named standard in which modifications are being considered as a result of public comments and/or Board staff consideration.

On July 17, 2014, the Standards Board held a Public Hearing to consider revisions of Title 8, Sections 4345, 4351, 4352, and 4354 of the General Industry Safety Orders. The Standards Board received written comments on the proposed revisions. The standard has been modified as a result of these comments and Board consideration.

A copy of the modified text is attached for your information. In addition, a summary of written and oral comments regarding the original proposal and staff responses is included.

Any written comments on these modifications must be received by 5:00 p.m. on November 17, 2014, at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833 or submitted by fax to (916) 274-5743 or e-mailed to oshsb@dir.ca.gov. This proposal will be scheduled for adoption at a future Business Meeting of the Standards Board.

The Standards Board's rulemaking file on the proposed action is open to public inspection Monday through Friday, from 8:00 a.m. to 4:30 p.m. at the Standards Board's Office. Inquiries concerning the proposed changes may be directed to Marley Hart, Executive Officer at (916) 274-5721.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date: October 31, 2014

Marley Hart, Executive Officer

PROPOSED MODIFICATIONS
(Regulatory language to be deleted is shown in bold strike-out and, new language is shown in bold underline.)

**STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

PROPOSED STATE STANDARD,
TITLE 8, DIVISION 1, CHAPTER 4

Amend Section 4351 to read:

§4351. Definitions.

Collection-~~Mode~~. The phase of operation of a collection and transportation vehicle during which active loading of materials occurs, including travel between material loading points, and at vehicle speeds at or less than 2010 mph (3216 kph).

Secondary Position. The position(s) in a dual drive configuration which is (are) designed to be occupied by the driver while standing during collection-~~mode~~.

Transit. **The phase of operation of a collection and transportation vehicle during which no active loading or unloading of material occurs. This includes the on-road movement of the vehicle from the employer's yard to the collection route, from the end of the collection route to the disposal or processing facility, from the disposal or processing facility back to the employer's yard, and operation between various facilities. Transit includes operation between collection points when speed exceeds 20 mph (32 kph).**

Work Brake. A feature of certain collection vehicles, typically equipped with secondary, right hand or stand up drive positions, which holds the vehicle in a stopped position, after the vehicle has been brought to rest using the service brake, to permit the operator to leave the cab temporarily in order to load material into the vehicle.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

**STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

PROPOSED STATE STANDARD,
TITLE 8, DIVISION 1, CHAPTER 4

Amend Section 4354 to read:

§4354. Mobile Compaction Equipment.

(i) Collection vehicles equipped with a secondary drive position shall be operated as follows:

(1) The speed of the vehicle shall be limited to **2010** mph (**3216** kph) when operated from the **stand-up secondary** position **in collection mode**.

(2) Mirrors shall be adjusted to provide adequate visibility from the operator's driving position.

(3) Seatbelts shall be worn at all times while the vehicle is **in transit moving**. **EXCEPTION: As necessary while operating in collection mode from the secondary position at speeds less than 20 mph (32 kph).**

~~(4)~~ Occupant **restraint(s)restraints**, such as **a door(s)**, locking or latching bars, safety **chain(s)chains**, or **strap(s)straps** shall be installed across any **truck cab opening and in use while driving at the secondary position openings in the cab of the vehicle**. **EXCEPTION: While operating in collection mode from the secondary position at speeds less than 10 mph (16 kph).**

(5) Only qualified operators shall be permitted to drive in the secondary position.

(j) On vehicles equipped with a work brake, the work brake feature shall not be used as the primary means of stopping the vehicle. A safety sign shall be placed within the operator(s) view, such as: "DO NOT USE WORK BRAKE INSTEAD OF SERVICE BRAKE TO STOP VEHICLE."

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

SUMMARY OF AND RESPONSES TO COMMENTS

SUMMARY OF AND RESPONSES TO WRITTEN AND ORAL COMMENTS

I. Written Comments

Mr. David Shiraishi, Area Director, Region IX, OSHA, U.S. Department of Labor, by letter dated July 11, 2014.

Comment:

Mr. Shiraishi commented that Federal OSHA has reviewed the proposal and found it to be commensurate with federal standards.

Response:

The Board thanks Mr. Shiraishi for his comment and participation in the Board's rulemaking process.

Ms. Juliann Sum, Acting Chief, Division of Occupational Safety and Health, by letter dated July 11, 2014.

Comment:

Ms. Sum wrote that the Division is opposed to the changes proposed in Title 8 Section 4354(i) because the proposed changes would allow the driver to operate a collection vehicle without any devices to prevent him or her from falling out of the vehicle. She points out that the proposed changes do not address the fact that the secondary drive position on the right side of the waste collection vehicle is located directly in front of the forward wheel and that the "moving forward wheel, when turned to the right, can pull the operator out of the cab and throw the operator to the ground in front of the forward wheel if the operator's foot slips off the platform and contacts the moving forward wheel." She also commented that "the proposed change would override some manufacturer's recommendations that the safety chain or safety bar be in place at all times when the vehicles are in motion." Additionally, she stated that "the only safety measure required by the proposed change is to limit speeds of the waste collection vehicles to 10 mph," and that the "safety measure is unenforceable as there is no provision which requires employers to monitor the speed of vehicles with their equipped GPS systems."

Response:

The Board accepts the comment and proposes to remove the exceptions to the requirements for seatbelts and occupant restraints. The Board also proposes to remove language which may conflict with recommendations from the manufacturer and to use language which is the same as, or nearly the same as, that used in ANSI Z245.1-2012, upon which the proposed regulation is based.

The Board thanks Ms. Sum for her comments and participation in the Board's rulemaking process.

Mr. Eric Berg, Acting Principal Safety Engineer, Division of Occupational Safety and Health, by letter dated July 15, 2014.

Comment:

Mr. Berg stated that ANSI Z245.1-2012 is incorporated by reference into the proposed amendments, but that safety requirements related to the maintenance, operation, and use of collection vehicles were omitted. He also commented that the ANSI Z245.1-2012 standard contains important safety requirements for collection vehicles that should not be ignored. Specifically, he mentions the standard's requirement for occupant restraints while operating from the secondary position as a concern. Continuing, he stated that the proposed Section 4354(i) would undermine the protections of the ANSI standard, by not requiring the use of an occupant restraint, and that the proposed change will increase the hazards faced by the drivers of collection vehicles.

Response:

The Board refers the commenter to the response to the comment from Ms. Juliann Sum.

The Board thanks Mr. Berg for his comments and participation in the Board's rulemaking process.

Ms. Dorothy Wigmore, Occupational Health and Green Chemistry Specialist, Worksafe, by letter dated July 16, 2014.

Comment 1:

Ms. Wigmore commented that Worksafe takes no issue with the requirements to update the plates or markings affixed to dual control mobile compaction vehicles with the appropriate Z245 standard labeling.

Response:

The Board concurs with Ms. Wigmore and appreciates her support.

Comment 2:

Ms. Wigmore points out that ANSI Z245.1-2012 requires that restraints such as safety chains or straps be installed across the opening of a compaction vehicle cab while the operator is driving in the secondary position. She observes that previous editions of the ANSI Z245.1 standard stated that safety chains or straps were required when in transit, but that the phrase "when in transit" was intentionally removed from the 2012 version of the standard. She concludes that "the proposal ignores this important and relevant change." She also states that "the Board staff's proposal generally is inconsistent with the law requiring the Board and Cal/OSHA to protect California workers' health and safety, with key materials in the 'Documents relied upon' in the Initial Statement of Reasons (ISOR), and with common sense. It will not 'provide worker safety' or accomplish the 'necessary safeguarding of employees.' Furthermore, Ms. Wigmore asserts

that the proposal does not recognize key hazards and root causes of many injuries and deaths in this sector. She opines that quotas and pressure to enter and exit the vehicle quickly are responsible for such incidents. Ms. Wigmore commented that the proposed amendment to Section 4354 should be removed because it harms workers. She requests a proposal that incorporates the restraint requirements of ANSI Z245.1.

Response:

The Board refers the commenter to the response to the comment from Ms. Juliann Sum.

Comment 3:

Ms. Wigmore stated that “qualified operators” as proposed in the amendment should explicitly state the criteria.

Response:

The Board does not accept the comment. The term “qualified operator” is well established in Title 8 and is defined in Section 3207 as “A person designated by the employer who by reason of his training and experience has demonstrated his ability to safely perform his duties and, where required, is properly licensed in accordance with federal, state, or local laws and regulations.”

Comment 4:

Ms. Wigmore commented that there should be more than a sign saying not to use the work brake.

Response:

The Board does not accept the comment because the proposed language is based upon requirements found in ANSI Z245.1-2012. Board staff believes the language is sufficient as stated. Modification of the proposal as a result of the comment is unnecessary.

Comment 5:

Ms. Wigmore commented on the rulemaking process, asking why a committee was necessary to update a reference to an ANSI standard. She also wondered how the committee came to recommend a change that did not agree with the consensus standard.

Response:

The minutes of the advisory committee meeting as well as the recording of the meeting in its entirety are available to the public for review between 8 am and 5 pm, Monday through Friday, at the Standards Board office in Sacramento. In regard to the use of an advisory committee for the amendment, the Board often convenes advisory committees in rulemaking efforts when deemed necessary.

Comment 6:

Ms. Wigmore commented that the makeup of the advisory committee was not representative since worker and union voices were not present for the December 2013 discussion.

Response:

Board staff made several attempts to involve labor representatives in the rulemaking effort, including invitations to the advisory committee meeting. Additionally, the proposed language and minutes of the advisory committee meeting were sent to employee representatives for their review and comment. Hearing no comments in return, Board staff developed the proposal based upon the consensus of the stakeholders present, which included Division and industry representatives.

The Board thanks Ms. Wigmore for her comments and participation in the Board's rulemaking process.

Mr. Jim Dufour, Attorney, CIH, representing Waste Management, by letter dated July 16, 2014.

Comment:

Mr. Dufour commented that proposed Section 4354 is more stringent than the requirements of ANSI Z245.1-2012, but that it can be practically implemented by industry and employees in the state. He wrote in support of the amendment because he believes that dual control mobile compaction vehicles are currently unregulated in California and that it is not appropriate to leave the regulated community without a clear and protective standard for the operation of said vehicles. Approving the standard will plug an existing hole in the Title 8 regulations.

Response:

The Board thanks Mr. Dufour for his comments and participation in the Board's rulemaking process.

Mr. W.A. (Billy) Martin, Senior Safety Director of Safety Operations Waste Management Safety Services, LLC, by letter dated July 15, 2014.

Comment:

Mr. Martin commented in support of the proposed regulation, pointing out that there have been many changes in equipment and operating practices between 1992 (the year of the currently required ANSI Z245.1 standard) and 2012 (the year of the latest ANSI Z245.1 standard). He furthermore stated that the proposed changes eliminate confusion caused by other standards that are not practical when applied to operators of mobile refuse compaction vehicles.

Response:

The Board thanks Mr. Martin for his comments and participation in the Board's rulemaking process.

Mr. Shane A. Gusman, Legislative Representative, California Teamsters Public Affairs Council, by letter dated July 16, 2014.

Comment:

Mr. Gusman commented that the proposed amendments attempt to "get rid of the rules" regarding "basic garbage truck safety regulations."

Response:

The Board does not accept the comment. Board staff convened the advisory committee meeting because there are currently no rules specific to the operation of dual control compaction equipment in Title 8. The Articles governing refuse, trash collection, and compaction equipment are based upon ANSI Z245 standards that did not recognize the use of dual control mobile compaction equipment when they were published.

The Board thanks Mr. Gusman for his comments and participation in the Board's rulemaking process.

Ms. Jackelyn Cornejo, Project Director, Los Angeles Alliance for a New Economy (LAANE), by letter dated July 17, 2014.

Comment 1:

Ms. Cornejo points out that ANSI Z245.1-2012 requires that restraints such as safety chains or straps be installed across the opening of a compaction vehicle cab while the operator is driving in the secondary position. She observes that previous editions of the ANSI Z245.1 standard stated that safety chains or straps were required when in transit, but that the phrase "when in transit" was intentionally removed from the 2012 version of the standard. She concludes that "the proposal ignores this important and relevant change." Ms. Cornejo also stated that "the Board staff's proposal generally is inconsistent with the law requiring the Board and Cal/OSHA to protect California workers' health and safety, with key materials in the 'Documents relied upon' in the Initial Statement of Reasons (ISOR), and with common sense." It will not 'provide worker safety' or accomplish the 'necessary safeguarding of employees,' she says. Finally, Ms. Cornejo commented that the proposal does not recognize key hazards and root causes of many injuries and deaths in this sector. She opines that quotas and pressure to enter and exit the vehicle quickly are responsible for such incidents.

Response:

The Board staff refers the commenter to the responses to the comments from Ms. Juliann Sum.

Comment 2:

Ms. Cornejo commented that the Board staff “needs to make more efforts to include worker and waste industry in its activities.”

Response:

The Board refers the commenter to the response to Comment 6 from Ms. Dorothy Wigmore.

The Board thanks Ms. Cornejo for her comments and participation in the Board’s rulemaking process.

II. Oral Comments

Oral comments received at the July 17, 2014, Public Hearing in Oakland, California.

Mr. Eric Berg, Acting Principal Safety Engineer, Division of Occupational Safety and Health, in testimony given on July 17, 2014.

Comment:

Mr. Berg commented that the proposed amendments allow drivers on the right side of the truck to drive without a safety bar. He stated that allowing this practice would undermine the Division’s enforcement efforts and could cause the appeal of a 2011 fatality case to be dismissed. Mr. Berg commented that the current ANSI standard requires a safety bar or strap to be in place and that if the proposed amendment is adopted, California regulations will be less protective than the ANSI standard.

Response:

The Board refers the commenter to the responses to the written comments from Ms. Juliann Sum.

The Board thanks Mr. Berg for his comments and participation in the Board’s rulemaking process.

Mr. Mitch Seaman, California Labor Federation, in testimony given on July 17, 2014.

Comment:

Mr. Seaman commented that the California Labor Federation opposes the standard and expressed a desire to see the Board staff involve more labor groups in its rulemaking efforts.

Response:

The Board refers the commenter to the response to written Comment No. 6 from Dorothy Wigmore.

The Board thanks Mr. Seaman for his comments and participation in the Board's rulemaking process.

Mr. W.A. (Billy) Martin, Senior Safety Director of Safety Operations Waste Management Safety Services, LLC, in testimony given on July 17, 2014.

Comment:

Mr. Martin echoed his written comments in support of the proposed amendments.

Response:

Please see the responses to Mr. Martin's written comments.

The Board thanks Mr. Martin for his comments and participation in the Board's rulemaking process.

Ms. Dorothy Wigmore, Occupational Health and Green Chemistry Specialist, Worksafe, in testimony given on July 17, 2014.

Comment:

Ms. Wigmore echoed her written comments against the proposal.

Response:

Please see the responses to Ms. Wigmore's written comments.

The Board thanks Ms. Wigmore for her comments and participation in the Board's rulemaking process.

Mr. Jim Dufour, Attorney, CIH, representing Waste Management, in testimony given on July 17, 2014.

Comment:

Mr. Dufour echoed his written comments in support of the proposed amendments.

Response:

Please see the responses to Mr. Dufour's written comments.

The Board thanks Mr. Dufour for his comments and participation in the Board's rulemaking process.

Ms. Patty Quinlan, Occupational Safety and Health Standards Board Public Member, in testimony given on July 17, 2014.

Comment:

Ms. Quinlan asked for clarification of whether or not a safety bar was required by ANSI Z245.1-2012.

Response:

ANSI Z245.1-2012 says the following regarding the operation of collection vehicles equipped with stand-up or dual drive positions from the stand-up or dual position:

7.4.8.7 Vehicles equipped with stand-up or dual drive positions

When operating vehicles so equipped from the stand-up or dual position:

7.4.8.7.3 Dual drive position restraining devices

Using the restraining devices specified in Section 12.3.5 while driving at the secondary position.

12.3.5 Occupant restraint(s), such as a door(s), locking or latching bars, safety chain(s), or strap(s) shall be installed across any truck cab opening.

The Board believes that ANSI Z245.1-2012 clearly intends for the occupant restraints mentioned above to be used at all times while the vehicle is operated from the right-hand or secondary position.

Mr. Dave Thomas, Chairman, Occupational Safety and Health Standards Board, in testimony given on July 17, 2014.

Comment:

Mr. Thomas commented that although there was agreement at the advisory committee, there does not appear to be any now. He recommended that Board staff reconvene the advisory committee to do what is safest for the workers.

Response:

The Board refers the commenter to the responses to the written comments from Ms. Juliann Sum.

Ms. Laura Stock, Occupational Safety and Health Standards Board Member, in testimony given on July 17, 2014.

Comment:

Ms. Stock commented that she has concerns with the exceptions in the proposal and does not see a clear explanation as to why they are there or how they enhance safety. She opined that some occupant restraint is necessary. She also stated that if removing one or both of the exceptions did not clarify the need for a restraint, then staff should consider inserting a requirement for a restraint.

Response:

The Board refers the commenter to the responses to the written comments from Ms. Juliann Sum.

Mr. Dave Harrison, Occupational Safety and Health Standards Board Member, in testimony given on July 17, 2014.

Comment:

Mr. Harrison commented that some type of restraint for the operators is necessary. He suggested getting rid of one of the exceptions in 4354(i).

Response:

The Board refers the commenter to the responses to the written comments from Ms. Juliann Sum.