

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**FINAL STATEMENT OF REASONS**

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**MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM
THE 45-DAY PUBLIC COMMENT PERIOD**

As a result of public comments, the following substantive and sufficiently related modifications have been made to the Initial Statement of Reasons published in the California Regulatory Notice Register dated May 30, 2014.

Section 4351. Definitions.

Three new definitions were proposed to be added to Section 4351, which are related to the operation of dual control mobile compaction vehicles: Collection Mode, Secondary Position, and Work Brake. The proposed definitions were developed using ANSI Z245.1-2008 and input from stakeholders at a representative advisory committee meeting held in December of 2013.

The definition for "collection mode" is proposed to be modified to remove the word "mode", and appear as used in ANSI Z245.1-2012. Additionally, the speed restrictions developed by the consensus of the advisory committee will be replaced by the 20 miles per hour (mph) limit provided by the standard. The words "at or" will be added to include 20 mph in the part of the definition of "collection" that reads "and at vehicle speeds at or less than 20 mph."

The definition for "secondary position" is also proposed to read similar to the ANSI Z245.1-2012 standard, instead of as developed by the advisory committee consensus.

No changes are proposed for the definition of "work brake".

Finally, an additional definition for "transit" is proposed to be added to Section 4351, using the wording found in the ANSI Z245.1-2012 standard.

The above modifications to the definitions and the addition of the definition for "transit" are necessary to aid employers in implementing the safety protections of the other proposed amendments regarding dual control mobile compaction equipment.

Section 4354. Mobile Compaction Equipment

Originally proposed subsection (i) addresses the operation of dual control mobile compaction vehicles in accordance with selected sections of ANSI Z245.1-2012. Among other provisions, the subsection limits the speed of the vehicle to 10 mph when driven from the secondary position in collection, requires the use of seatbelts whenever the vehicle is in motion, except when traveling less than 10 mph during collection, and requires that occupant restraints, such as locking or latching bars, safety chains, or straps, be employed across all openings of the cab of the vehicle, except when traveling less than 10 mph during collection.

As the result of public comment, subsection (i) is proposed to be modified as follows:

Subsection (i)(1) will be modified to reflect the language from ANSI Z245.1-2012 regarding the speed of vehicles equipped with stand-up or dual drive positions. Subparagraph 7.4.8.7.1 of ANSI Z245.1-2012 provides that vehicles operated from the stand-up or dual position be limited to a maximum of 20 mph while the operator is in the stand-up position. The original proposal of 10 mph will be deleted along with the words “secondary” and “in collection mode,” and is necessary to more fully reflect the wording of the ANSI standard.

Subsection (i)(3) will also be modified to better reflect the language from ANSI Z245.1-2012 regarding the use of seatbelts. Subparagraph 7.3.2(e) of ANSI Z245.1-2012 requires occupants to wear seatbelts during transit, but not during collection. The previously proposed exception to seatbelt use for operation in collection mode at speeds less than 10 mph was deleted. However, without the exception, the remaining language does not make sense because it unintentionally requires the operator to wear a seatbelt at all times when the vehicle is in motion, which would include while standing during collection. Therefore, the Board proposes to replace the current wording with language similar to that used in the ANSI standard. This is necessary to clarify the requirements for seatbelt use on the vehicles.

Subsection (i)(4) will be modified to reflect the language from ANSI Z245.1-2012 regarding the use of operator restraints. Subparagraph 7.4.8.7.3 of ANSI Z245.1-2012 requires that the operator restraints listed in subparagraph 12.3.5 be used while the vehicle is operated from the secondary drive position. Subparagraph 12.3.5 states that “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 exception for using the occupant restraint will be removed from the initially proposed text, and language capturing the intent of the ANSI requirements will be used instead.

Using the language from the ANSI Z245.1-2012 standard is necessary to provide employers with current information for the safe operation of dual control compaction equipment. Furthermore, the modification is necessary to more fully reflect the intent and safety protections of ANSI Z245.1-2012 within Title 8.

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.

**MODIFICATIONS AND RESPONSES TO COMMENTS RESULTING FROM
THE 15-DAY NOTICE OF PROPOSED MODIFICATIONS**

No further modifications to the information contained in the Initial Statement of Reasons are proposed as a result of the 15-Day Notice of Proposed Modifications mailed October 31, 2014.

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 November 14, 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.

Mr. Andrew M. Kenefick, Senior Legal Counsel for Waste Management, by letter dated November 17, 2014.

Comment:

Mr. Kenefick wrote to voice opposition to the changes proposed in the 15-day notice, based on the following concerns:

1. The proposed standard is not based on substantial evidence in the record, including critical facts that were not fairly considered by the Board. The Board ignored information provided by safety experts, relied upon inconsistent testimony from the Division, and assumed there was a safety hazard to be corrected when none existed.
2. The Board is abusing its power if it adopts a standard for the purpose of protecting the Division's legal position in litigation.
3. The Board is violating the Administrative Procedures Act by improperly noticing the proposed changes with a 15-day comment period instead of a 45-day period.
4. The Board erroneously believes that the ANSI Z245.1-2012 standard intends for the occupant restraints to be used at all times while the vehicle is operated from the secondary position.
5. The proposed changes are totally new, unsupported, and burdensome to the industry and will have a profound economic and environmental impact.
6. The proposed changes are in conflict with AB 32, which requires "all state agencies [to] consider and implement strategies to reduce their greenhouse gas emissions."
7. Because the proposed standard will not be enforceable on public streets and highways, the purported safety benefits will be minor, given that most of the stop-to-stop collection activity occurs on public streets or highways.
8. The Board failed to show necessity for the regulation, and is exceeding its statutory authority by attempting to establish a zero-risk position.

9. The Board's rejection of the advisory committee's recommendation undermines the integrity and worth of the advisory committee process.

Response:

The Board does not accept the comments for the reasons described below:

1. The Standards Board is the only agency in the state authorized to adopt, amend or repeal occupational safety and health standards or orders. The Board receives rulemaking requests from a variety of sources and determines a course of action. Based upon the information provided by stakeholders, the Board chooses to adopt the provisions of the ANSI Z245.1-2012, a national consensus standard, as requested by the majority of the parties participating in the rulemaking process (i.e. Waste Management and other industry reps, DOSH, and labor representatives).
2. Please see Part 1 of the response above.
3. As detailed in the minutes of the advisory committee meeting, the committee discussed which elements of the ANSI Z245.1-2012 standard should be incorporated into the amended regulation, or if the entire document should be incorporated by reference. Industry argued that occupant restraints during collection from the secondary or right-hand position were not necessary, and the Division argued that they were. A compromise was reached wherein the Division agreed to support collection mode operation without the use of a restraint in return for industry's acceptance of a 10 mph maximum speed limit.

Because much of the rulemaking discussion at the advisory committee focused on the elements of the ANSI Z245.1-2012 standard, it is foreseeable that any or all parts of the standard could be used in the proposed amendment. The Board's decision to deviate from the compromise agreement and defer to the ANSI standard's requirements is sufficiently related to the initial proposal; therefore, only a 15-day notice for the change is required.

Additionally, as discussed in the advisory committee, the consensus of the committee, including the "compromise agreement," is only a recommendation to the Board staff, subject to internal review and modification at its discretion.

4. The Commenter asserts that the words "drive," or "driving," are key to distinguishing between the collection and transit operations of collection vehicles, but the Board points out that neither word is used in the definitions of "collection" or "transit" in the ANSI standard. "Collection" uses the word "travel" (i.e. "travel between material loading points") to describe the movement of the vehicle, and "transit" uses the words "on-road movement." The Board, therefore, interprets the standard as written and is unable to conclude that the ANSI Z245.1-2012 standard distinguishes between

collection and transit as pertaining to the requirement for across the doorway occupant restraint use.

The Commenter also asserts that the Board concluded “that ANSI Z245.1 was changed in 2012 to require continuous use of the restraint during collection.” The Board disputes the Commenter’s assertion. The Board concludes that the ANSI standard has never explicitly stated that a vehicle may be operated without a door or occupant restraint employed across the opening during collection in the 2012 or any previous version.

During the December 6, 2013 advisory meeting, the Chair explained that the 2008 version of the ANSI Z245.1 standard explicitly required occupant restraints during transit, but was silent on their use during collection. The Chair contacted a representative from the ANSI Z245.1 committee for clarification. Although the representative did not state how the standard should be applied, she pointed out that the 2012 version no longer included the phrase “When in transit...” before the language stating that occupant restraints should be used. The Chair concluded that the deletion removed the ambiguity in the requirement for the use of the restraint.

The deletion of the phrase “When in transit” does not support the Commenter’s assertion that the allowance of vehicle operation without the use of a restraint during collection is “clearly understood by the ANSI Z245.1 committee and the waste collection and recycling industry.” This is a misinterpretation by the industry and is dismissed by the Board.

5. Several industry representatives in the December 2013 advisory committee stated that they already complied with the ANSI Z245.1-2012 and previous editions of the standard; therefore, the amendment making some of the consensus standard’s elements mandatory cannot be considered “totally new [and] unsupported.” Additionally, because the collection vehicles are already required to be manufactured with the necessary passenger restraint devices, the Board rejects the assertion that the requirement to use them is burdensome or constitutes “a profound economic and environmental impact.” Furthermore, as stated by the Commenter, the rule will be enforceable on only a small percentage of the vehicle’s route, and therefore, the burden or impact on the employer, if any, will be even less significant.

For additional information on the Commenter’s assertion that the proposed amendment will have “a profound economic and environmental impact,” please refer to Parts 6 and 7 of the current response below.

6. As stated by the Commenter, “all state agencies shall consider and implement strategies to reduce their greenhouse gas emissions.” The proposed amendment will not in any way subject the environment to excessive greenhouse gas emissions.

7. The Commenter correctly points out that the proposed regulation will not be enforceable by DOSH on public streets and highways because of jurisdictional limitations. The Board recognizes that a large majority of a collection vehicle's route takes place on public streets or highways and that the increase in employee protection from the restraint requirement may be "minor", especially when the proposed standard would be enforceable only on private roads. However, in response to the many requests from stakeholders and the Division, the Board has decided to defer to the requirements of the ANSI Z245.1-2012 standard, where applicable. The standard as a whole provides protection for dual control collection vehicles, which have been previously unrecognized and unregulated in California.
8. The necessity for the regulation was discussed in the advisory committee before any rulemaking language was considered. All parties present for the meeting agreed that dual control mobile compaction vehicle operations are currently unregulated by Title 8 and that an updated standard should be promulgated to ensure their safe operation in California.
9. Please see Part 3 of the current response with regard to the advisory committee consensus being only a recommendation to the Board. The Board appreciates the participation of each member of the advisory committee and values his/her input.

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

Mr. Nick Lapis, Californians Against Waste, by letter dated November 17, 2014.

Comment:

Although no specific rationale was provided, Mr. Lapis commented that the proposed amendment could have a significant impact on the state's recycling industry. He also said that the amendment does not appear to be grounded in realistic safety concerns.

Response:

The Board refers the Commenter to Parts 7 and 8 of the response to Mr. Kenefick.

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

Mr. Eddie Westmoreland, Western Region Vice President of Government Affairs, and Mr. Shawn Mandel, Director of Safety, Waste Connections, Inc., by letter dated November 14, 2014.

Comment:

Mr. Westmoreland and Mr. Mandel commented that the proposed amendment is fundamentally flawed without an updated economic impact statement. They stated that the amendment would

adversely affect refuse collection activities and is impractical to implement, while failing “to recognize the physical realities of [their workplace.]” They continued stating that the amendment did not appear to be supported by science or the ANSI Z245.1 standard’s committee of experts. They wrote in support of the provisions of the current ANSI Z245.1 standard for its contribution to the safety of employees.

Response:

The Board refers the Commenters to Part 7 of the response to Mr. Kenefick, regarding economic impact. Additionally, if the Commenters are in fact complying with the ANSI Z245.1 standard as they claim, they should experience no increased economic or other impact because the proposed amendment is taken from the ANSI standard without modification. The standard cannot be impractical to implement if it has already been implemented by most operators of dual control vehicles in California.

The Board agrees with the Commenters that adherence to the provisions of the ANSI Z245.1 standard has not been shown definitively to lead to any serious injuries or accidents.

The Board thanks Mr. Westmoreland and Mr. Mandel for their comments and participation in the Board’s rulemaking process.

Ms. Cara Martinson, Legislative Representative, California State Association of Counties, et al., by letter dated November 17, 2014.

Comment:

Ms. Martinson and a coalition of local government and private companies commented that the proposed amendment was not properly noticed, does not take into account economic or other impacts that the regulation will have on California’s solid waste collection industry, and is contrary to the California Vehicle Code, which exempts refuse drivers from wearing seatbelts during the collection of wastes and recyclables along the collection route.

The coalition requests that the Board reject the proposal, which in their view, is less stringent than the July 17, 2014 compromise regulatory proposal. They request that the Board reinstate the July 17, 2014 proposal developed by the advisory committee.

Response:

The Board does not accept the comment. In regard to the change not being noticed properly, the Board refers the Commenters to Part 3 of the response to Mr. Kenefick. In response to the assertion that the Board is not taking into account the economic or other impact of the proposed change, including increased employee injury and traffic congestion, the Board refers the Commenters to Part 5 of the response to Mr. Kenefick.

The Board does not dispute the Commenters’ understanding of the California Vehicle Code regarding the exception to seatbelt requirements for operators wearing seatbelts while “actually

engaged in the collection of solid waste or recyclable materials along that driver's collection route." The Board points out, however, that the Vehicle Code is silent on the use of the restraints at issue in the present rulemaking effort. Furthermore, the proposed amendment only requires seatbelts to be worn during transit, which is consistent with the Vehicle Code. Please see Part 7 of the response to Mr. Kenefick for additional information.

As a point of clarification, the Commenters assert that the ANSI Z245.1-2012 standard allows the vehicle to be operated at speeds less than 20 miles per hour without the use of a seatbelt or the restraint devices mentioned in Section 12.3.5 of the ANSI standard. The Board directs the Commenters to Section 7.4.8.7.3 of the standard which requires vehicle operators to "[use] the restraining devices specified in Section 12.3.5 while driving at the secondary position." The Board points out that there is no differentiation between transit and collection in the referenced sections. Please see the Board's response to Ms. Quinlan's oral comment in the response to comments from the 45 day comment period and Part 4 of the response to Mr. Kenefick in the response to written comments resulting from the 15 day notice.

The Board does not agree that the proposal is less stringent than the July 17, 2014 advisory committee consensus recommendations and, that in some way it is also inconsistent with the requirements of the ANSI Z245.1-2012 standard, which the commenter believes allows dual control compaction vehicle drivers to forgo use of the doorway restraint when in collection/service mode. This is false because the proposal updates Title 8 mobile compaction standards which recognize the dual control type mobile compactor by referencing the ANSI 245.1-2012 standard. Staff has evaluated this standard carefully and notes that unlike previous editions of the ANSI 245.1 standard, the 2012 edition leaves no doubt that the standard requires the use of the doorway restraint regardless of whether the mobile compactor is in transit or collection mode. Given this, reinstating the compromise proposal developed by the July 17, 2014 advisory committee would result in a regulation that is inconsistent with the 2012 edition of the ANSI 245.1-2012 standard.

The Board thanks Ms. Martinson and the coalition for their comments and participation in the Board's rulemaking process.

ADDITIONAL DOCUMENTS RELIED UPON

None.

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

None.

DETERMINATION OF MANDATE

These standards do not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed standard. No alternative considered by the Board would be (1) more effective in carrying out the purpose for which the action is proposed; or (2) would be as effective as and less burdensome to affected private persons than the adopted action, or (3) would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Board staff were unable to come up with any alternatives or no alternatives were proposed by the public that would have the same desired regulatory effect.