

OCCUPATIONAL SAFETY
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NOTICE OF PROPOSED MODIFICATIONS TO
CALIFORNIA CODE OF REGULATIONS
TITLE 8, Division 1, Chapter 4, Subchapter 7, Article 3, Section 3248
of the General Industry Safety Orders

Mechanical Refrigeration

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 regulation in which further modifications are being considered as a result of public comments and/or Board staff evaluation.

On July 17, 2008, the Occupational Safety and Health Standards Board held a Public Hearing to consider revisions to Title 8, Division 1, General Industry Safety Orders, Section 3248. The Standards Board received oral and written comments on the proposed modifications. The regulation has been modified as a result of these comments.

A copy of the full text of the regulation with the modifications clearly indicated is attached for your information. In addition, a summary of all oral and written comments regarding the original proposal and responses is included.

Pursuant to Government Code Section 11346.8(d), notice is also given of the opportunity to submit comments concerning the addition to the rulemaking file of the following document incorporated by reference:

ADDITIONAL DOCUMENTS INCORPORATED BY REFERENCE

- Chapters 2 and 11 of the 2007 California Mechanical Code.

These documents are too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the documents by reference. Copies of these documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

Any written comments on these modifications must be received by 5:00 p.m. on December 5, 2008 at the Occupational Safety and Health Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833. The regulation will be scheduled for adoption at a future Business Meeting of the Occupational Safety and Health Standards Board.

The Occupational Safety and Health 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, 2520 Venture Oaks Way, Suite 350, Sacramento, California.

Inquires concerning the proposed modifications may be directed to the Executive Officer, Marley Hart at (916) 274-5721.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Marley Hart, Executive Officer

Date: November 17, 2008

Modifications to the Original Proposal

NOTE: The double strike-out portion of this proposal is intended to show that all of the originally proposed changes are withdrawn, and instead, the original wording of this regulation is retained, except for the modifications indicated with **bold** double strike-out (deleted language) or **bold** double underline (new language).

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Attachment No. 1

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

Amend Section 3248 to read as follows:

§3248. Mechanical Refrigeration.

~~(a) Mechanical refrigeration systems placed in service before March 13, 1999, shall be designed, installed, tested, and maintained in accordance with Chapters 4, 15, and 16 of the 1982 Uniform Mechanical Code (UMC).~~

~~(b) Mechanical refrigeration systems placed in service on or after March 13, 1999, shall be designed, installed, tested, and maintained in accordance with Chapters 2 and 11 of the 1997 Uniform Mechanical Code which is hereby incorporated by reference.~~

~~(a) Mechanical refrigeration systems shall be designed, installed, tested, and maintained in accordance with the California Mechanical Code in effect at the time the design, installation, test, or maintenance is undertaken.~~

~~EXCEPTION: Mechanical refrigeration systems designed, installed, tested, and maintained in accordance with the California Mechanical Code in effect at the time the system was installed may continue in service, unless such mechanical refrigeration system poses a hazard to life, health or property.~~

~~(b) Modifications of mechanical refrigeration systems shall be made in accordance with the California Mechanical Code in effect at the time of the modification.~~

(a) Mechanical refrigeration systems placed in service before March 13, 1999, shall be designed, installed, tested and maintained in accordance with Chapters 4, 15, and 16 of the 1982 Uniform Mechanical Code (UMC).

NOTE: A copy of the 1982 UMC is available for inspection at the office of the Occupational Safety and Health Standards Board. As of August 2008, copies may be sought for review at the California State Library and other public libraries, and copies may be purchased on a per-page basis from the International Association of Plumbing and Mechanical Officials (IAMPO).

(b) Mechanical refrigeration systems placed in service on or after March 13, 1999, **but before January 1, 2008,** shall be designed, installed, tested, and maintained in accordance with Chapters 2 and 11 of the 1997 Uniform Mechanical Code which ~~is~~ **are** hereby incorporated by reference.

(c) Mechanical refrigeration systems placed in service on or after January 1, 2008, shall be designed, installed, tested, and maintained in accordance with Chapters 2 and 11 of the 2007 California Mechanical Code, which are hereby incorporated by reference.

STANDARDS PRESENTATION
TO
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PROPOSED STATE STANDARD,
TITLE 8, DIVISION 1, CHAPTER 4

NOTE: The provisions of Section 3248 are not intended to apply to the use of water or air as a refrigerant nor to refrigerating systems installed on railroad cars, motor vehicles, motor-drawn vehicles or on shipboard.

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

Summary and Responses to Oral and Written Comments

SUMMARY AND RESPONSES TO ORAL AND WRITTEN COMMENTS

I. Written Comments

Lawrence P. Halprin, Keller and Heckman LLP, Washington, DC, by letter dated July 17, 2008.

Comment No. 1:

Mr. Halprin states that an “automatic updating” provision of the original proposal is an improper delegation of authority by the Occupational Safety and Health Standards Board (Board).

Response to Mr. Halprin’s Comment No. 1:

The Board disagrees with Mr. Halprin. Mr. Halprin has not provided legal authority to support his comment. Nonetheless, this matter is moot, since the portion of the proposal in question has been deleted.

Comment No. 2:

Mr. Halprin states that the wording of the EXCEPTION statement in the original proposal is unclear.

Response to Mr. Halprin’s Comment No. 2:

This matter is moot, since the EXCEPTION statement in question has been deleted.

Ken Nishiyama Atha, Regional Administrator, U.S. Department of Labor, Occupational Safety and Health Administration, Region 9, by letter dated July 9, 2008.

The Occupational Safety and Health Administration concurs that the original proposal is at least as effective as the federal counterpart standard, 29 CFR §1910.111(a)(1) and (b)(1).

Response to Mr. Nishiyama Atha:

The Board thanks Mr. Nishiyama Atha of the Occupational Safety and Health Administration for his interest and participation in this proposal.

Clyde Trombettas, Division of Occupational Safety and Health (Division), by electronic mail sent July 9, 2008.

Comment No. 1:

Mr. Trombettas states words to the effect that employee health and safety are not improved by the original proposal which would require the Division, in order to conduct its enforcement efforts, to locate many old and outdated versions of the UMC.

Response to Mr. Trombettas's Comment No. 1:

The Board agrees that the original proposal would impose undue enforcement burdens on the Division. The Board also believes that the original proposal could add ambiguities regarding compliance for the regulated public. Consequently, the Board has modified the proposal so that the safety order retains its existing provisions regarding the applicability of the 1982 and 1997 versions of the UMC, except for mechanical refrigeration systems placed in service during or after 2008, which are subject to the newly-adopted 2007 CMC in accordance with the newly-proposed Section 3248(c).

Comment No. 2:

Mr. Trombettas urges the Board to retain the 1982 UMC reference and to print the relevant 1982 UMC provisions in the California Code of Regulations (CCR).

Response to Mr. Trombettas's Comment No. 2:

The Board has retained the 1982 UMC reference, but declines to include the 1982 UMC provisions in the CCR. Not only might there be copyright objection to reprinting parts of the UMC in the CCR, but such an undertaking would add a very large amount of text to the CCR, and the addition of that text would have limited value. The number of mechanical refrigeration systems subject to the 1982 UMC will decrease over time, and significantly expanding the CCR for a shrinking number of systems would not be useful. Instead, in light of information about the availability of the 1982 UMC, an explanatory NOTE has been added identifying resources for obtaining and reviewing that edition of the UMC.

II. Oral Comments

Larry McCune, Division's Principal Safety Engineer

Mr. McCune requested that the portions of the 1982 UMC relevant to the regulation of mechanical refrigeration systems be added to CCR, Title 8, as an appendix.

Response to Mr. McCune:

Whether included as an appendix or otherwise, the Board believes that the text of the 1982 UMC should not be added to the CCR. Please see the Board's responses to Mr. Trombetta's written comments.

Board Member William Jackson:

Mr. Jackson stated words to the effect that if the referenced national consensus standards are out of print or otherwise unavailable, the relevant wording of those standards should be incorporated into the proposal.

Response to Mr. Jackson:

Please see the Board's responses to Mr. Trombetta's written comments.

Board Chair John MacLeod:

Mr. MacLeod asked whether ANSI standards are copyrighted and proprietary, thereby precluding the Board from using the wording of the ANSI standards in the Board's proposals.

Response to Mr. MacLeod:

Board staff contact with the International Association of Plumbing and Mechanical Officials indicates that the 1982 UMC is still subject to copyright. Please see the Board's responses to Mr. Trombetta's written comments.

Board Member Jonathan Frisch:

Comment No. 1:

Dr. Frisch stated that if the 1982 UMC is still copyrighted, Board staff should seek the copyright holder's permission to reprint the relevant portions of the 1982 UMC in CCR, Title 8.

Response to Dr. Frisch's Comment No. 1:

Please see the Board's responses to Mr. MacLeod's oral comment and Mr. Trombetta's written comments.

Comment No. 2:

Dr. Frisch asked whether the proposal would result in the decommissioning of non-compliant equipment.

Response to Dr. Frisch's Comment No. 2:

At the public hearing regarding this matter, Board staff indicated that the original proposal might create regulatory problems for very old equipment (an example was given of equipment dating back to 1908). Since the modified proposal does not change the standards applicable to such old systems, this proposal is not expected to have the sort of impact that is the subject of Dr. Frisch's comment.

Comment No. 3:

Dr. Frisch asked that the Final Statement of Reasons speak directly to the way the proposal improves health and safety.

Response to Dr. Frisch's Comment No. 3:

By adding an explanatory note that guides employers to the 1982 UMC, the modified proposal promotes safety by making it easier for employers, whose systems fall under subsection (a), to know the standards with which they must comply. By making new systems subject to the widely available most recent version of the CMC, this proposal similarly promotes compliance, and thereby employee safety, for the systems subject to new subsection (c).