

Reporting and recordkeeping requirements, Savings associations.

For the reasons stated in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 327 of Title 12 of the Code of Federal Regulations as follows:

#### **PART 327—ASSESSMENTS**

1. The authority citation for part 327 continues to read as follows:

**Authority:** 12 U.S.C. 1441, 1441b, 1813, 1815, 1817–1819; Pub. L. 104–208, 110 Stat. 3009–479 (12 U.S.C. 1821).

2. Section 327.2 of subpart A is revised to read as follows:

##### **§ 327.2 Certified statements.**

(a) *Required.* (1) Each insured depository institution shall certify its semiannual certified statement in the manner and form set forth in this section.

(2) The semiannual certified statement shall be comprised of the two quarterly assessment invoices issued during each semiannual period as prescribed in § 327.3(c) and (d). The two quarterly certified statement invoices combined shall reflect the amount and computation of the institution's semiannual assessment. Any rule applicable to the certified statement shall apply to each quarterly certified statement invoice.

(b) *Availability and access.* (1) The Corporation shall make available to each insured depository institution via the FDIC's e-business Web site *FDICconnect* two quarterly certified statement invoices during each semiannual period.

(2) Insured depository institutions shall access their quarterly certified statement invoices via *FDICconnect*, unless the FDIC provides notice to insured depository institutions of a successor system. In the event of a contingency, the FDIC may employ an alternative means of delivering the quarterly certified statement invoices.

(c) *Review by institution.* The president of each insured depository institution, or such other officer as the institution's president or board of directors or trustees may designate, shall review the information shown on each quarterly certified statement invoice.

(d) *Retention by institution.* If the appropriate officer of the insured depository institution agrees that to the best of his or her knowledge and belief the information shown on the quarterly certified statement invoice is true, correct and complete and in accordance with the Federal Deposit Insurance Act

and the regulations issued under it, the institution shall pay the amount specified on the invoice and shall retain the quarterly certified statement invoice in the institution's files for five years as specified in section 7(b)(5) of the Federal Deposit Insurance Act.

(e) *Amendment by institution.* If the appropriate officer of the insured depository institution determines that to the best of his or her knowledge and belief the information shown on the quarterly certified statement invoice is not true, correct and complete and in accordance with the Federal Deposit Insurance Act and the regulations issued under it, the institution shall pay the amount specified on the invoice, and may

(1) Amend its Report of Condition, or other similar report, to correct any data believed to be inaccurate on the quarterly certified statement invoice; amendments to such reports timely filed under section 7(g) of the Federal Deposit Insurance Act but not permitted to be made by an institution's primary Federal regulator may be filed with the FDIC for consideration in determining deposit insurance assessments; or

(2) Amend and sign its quarterly certified statement invoice to correct a calculation believed to be inaccurate and return it to the FDIC by the quarterly payment date for that semiannual period as specified in § 327.3(c) and (d).

(f) *Certification.* Data used by the Corporation to complete the quarterly certified statement invoice has been previously attested to by the institution in its Reports of Condition, or other similar reports, filed with the institution's primary Federal regulator. When an insured institution pays the amount shown on the quarterly certified statement invoice and does not correct that invoice as provided in paragraph (e) of this section, the information on that invoice shall be deemed certified for purposes of paragraph (a) of this section and section 7(c) of the Federal Deposit Insurance Act.

(g) *Requests for revision of assessment computation.* The timely filing of an amended Report of Condition or other similar report, or an amended quarterly certified statement invoice, that will result in a change to deposit insurance assessments owed or paid by an insured depository institution shall be treated as a timely filed request for revision of computation of quarterly assessment payment under § 327.3(h).

Dated at Washington, DC, this 21st day of May, 2004.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

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#### **DEPARTMENT OF LABOR**

##### **Occupational Safety and Health Administration**

##### **29 CFR Part 1910**

[Docket No. S–225A]

RIN 1218–AC03

##### **Notice of Availability of the Regulatory Flexibility Act Review of Presence Sensing Device Initiation for Mechanical Power Presses**

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Notice of availability.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) has conducted a review of the Presence Sensing Device Initiation (PSDI) requirements of the Mechanical Power Presses Standard pursuant to section 610 of the Regulatory Flexibility Act, and section 5 of Executive Order 12866 on Regulatory Planning and Review. In 1988, in order to assist small and large businesses in improving productivity while also improving worker protection, OSHA adopted provisions to permit PSDI. However, the PSDI provisions have not been utilized because no independent organization has been willing to validate PSDI installations.

Based on this review and public comments, OSHA has decided to update its mechanical power press standard to ANSI B.11.1–2001 or something similar. The new ANSI standard permits PSDI without independent validation but includes other provisions to maintain PSDI safety. Also, it improves safety and productivity of mechanical power presses in other ways, as well.

**ADDRESSES:** Copies of the entire report may be obtained from the OSHA Publication Office, Rm. N–3101, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–1888, Fax (202) 693–2498. The full report, comments, and referenced documents are available for review at the OSHA Docket Office, Docket No. S–225A, Rm. 2625, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–2119. The main text of the report will become available on the OSHA Web page at [www.OSHA.gov](http://www.OSHA.gov).

**FOR FURTHER INFORMATION CONTACT:**

Joanna Dizikes Friedrich, Directorate of Evaluation and Analysis, Rm. N3641, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693-1939, Fax (202) 693-1641. Direct technical inquiries about the Mechanical Power Presses and PSDI Standards to: Alcmene Haloftis, Rm. N3107, Telephone (202) 693-1859, or visit the OSHA Homepage at [www.OSHA.gov](http://www.OSHA.gov). Direct press inquiries to George Shaw, Acting Director of Information and Consumer Affairs, Rm. N-3647, telephone (202) 693-1999.

**SUPPLEMENTARY INFORMATION:**

*Background:* The Occupational Safety and Health Administration (OSHA) has completed a "lookback" review of the Presence Sensing Device Initiation (PSDI) provisions of its Mechanical Power Presses Standard, titled "Regulatory Review of OSHA's Presence Sensing Device Initiation (PSDI) Standard, May 2004." This **Federal Register** Notice announces the availability of the review document and briefly summarizes it.

A mechanical power press is a mechanically powered machine that shears, punches, forms or assembles metal or other material by means of cutting, shaping or combination dies attached to slides. A press consists of a stationary bed or anvil, and a slide having a controlled reciprocating motion. The slide, called the ram, is equipped with special punches and moves downward into a die block which is attached to the rigid bed. The punches and the die block assembly are generally referred to as a "die set."

The main function of a stamping press is to provide sufficient power to close and open the die set, thus shaping or cutting the metal part set on the die block. The metal part is fed into the die block and the ram descends to perform the desired stamping operation. The danger zone for the operator is between the punches and the die block. This area is referred to as the "point of operation."

If the employee's hand is in the point of operation when the press strokes, amputation of a finger, hand or arm is quite possible. Safeguards are needed to prevent or greatly reduce the possibility of this happening. However, there are a significant number of such amputations each year because of failure of safeguards, improper operation or other causes.

OSHA regulates mechanical power presses at 29 CFR 1910.217. OSHA adopted that standard in 1971 based on the 1971 revision of the American

National Standards Institute (ANSI) voluntary consensus standard (ANSI B11.1. "Safety Requirements for Construction, Care and Use of Mechanical Power Presses.")

Until 1988, based on the 1971 ANSI Standards, the OSHA standard required manual actuation of a press stroke, to prevent the actuation of a press stroke when the employee's hand was in the point of operation. A typical method of actuation was dual palm buttons set sufficiently far apart to prevent part of the employee's body from being in the point of operation when the press stroked.

A presence sensing device, typically a light curtain, senses when an object, such as a hand, is within its field. The 1971 ANSI standard permitted presence sensing devices (PSD) to be used as a guard, but it did not permit the PSD to initiate (actuate) the stroke of the press when the PSD senses that the employee has fed the press and removed the employee's hands and arms from the point of operation. PSDI increases the speed of the operation, consequently improving productivity. Experts also believe, if done correctly, it would be more protective of employees by protecting non-operator employees near the press (who would not be protected by manual actuation alone) and by reducing employee fatigue.

After several major studies, several rounds of public comments and a public hearing, OSHA issued the final rule permitting PSDI on March 14, 1988 at 53 FR 8327. OSHA believed, based on the studies, expert opinions, European experience, an experimental variance and comments, that the regulation would substantially improve productivity, better protect workers, and be implemented.

The Final Rule includes requirements for designing PSDI systems. It includes requirements that manufacturers certify the system and that an independent organization validate that certification. These provisions are located at 29 CFR 1910.217(h) and Appendices A, B and C.

However, PSDI has not been adopted for mechanical power presses. No organization has agreed to validate PSDI installations. PSDI is still widely used in Europe, and it is used for other types of equipment in the United States, where it had not been prohibited. In addition, there is a much updated ANSI B.11.1-2001 standard on mechanical power presses which permits PSDI. This updated standard does not require third party validation for PSDI, but it has a number of requirements for PSDI safety which are integrated throughout the standard.

**Regulatory Review**

OSHA decided to review the PSDI provisions of the Mechanical Power Presses Standard pursuant to section 610 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and section 5 of Executive Order 12866 (59 FR 51739, October 4, 1993). A major goal of the review was to determine whether there are changes that can be made which will encourage the implementation of PSDI, to improve business and, particularly, small business productivity, while protecting workers. In addition, the review covered all issues raised by section 610 of the Regulatory Flexibility Act and section 5 of E.O. 12866.

The purpose of a review under section 610 of the Regulatory Flexibility Act "(S)hall be to determine whether such rule should be continued without change, or should be rescinded, or amended consistent with the stated objectives of applicable statutes to minimize any significant impact of the rule on a substantial number of small entities.

The Agency shall consider the following factors:

- (1) The continued need for the rule;
- (2) The nature of complaints or comments received concerning the rule from the public;
- (3) The complexity of the rule;
- (4) The extent to which the rule overlaps, duplicates or conflicts with other Federal rules; and, to the extent feasible, with state and local governmental rules; and
- (5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the areas affected by the rule.

The review requirements of section 5 of Executive Order 12866 require agencies:

To reduce the regulatory burden on the American people, their families, their communities, their state, local and tribal governments, their industries: to determine whether regulations promulgated by the [Agency] have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive Order, within applicable law; and to otherwise improve the effectiveness of existing regulations.

OSHA requested public comments on its review of the PSDI Standard on August 28, 2002 at 67 FR 55181. It

requested that comments be submitted by January 27, 2003. Nine comments were received.

In its August 28, 2002 **Federal Register** Notice, OSHA also presented for public comment four possible options to encourage the safe implementation of PSDI.

- Option 1—Update all of § 1910.217 to ANSI B 11.1—2001 or something quite similar.

- Option 2—Revise the third-party validation requirements.

- Option 3—Eliminate all requirements for third-party validation, possibly replacing it with a self-certification requirement; leave the other PSDI requirements intact.

- Option 4—Replace OSHA's current PSDI requirements with the PSDI requirements in the new ANSI B.11.1.

The final report, "Regulatory Review of OSHA's Presence Sensing Device Initiation (PSDI) Standard, May 2004" discusses all issues raised by section 610 of the Regulatory Flexibility Act, section 5 of E.O. 12866, and by public comments. It reviews the industry profile, safety issues, economic benefits of PSDI, reasons why PSDI was not implemented, and public comments. It also analyzes the four options presented.

The report estimates that 40,000 employees use mechanical power presses which could be converted to PSDI. It estimates that 88% of such presses are used by small businesses. It reviews estimates that adding PSDI to a press would increase productivity on average 24.3% and that, if added to all suitable presses, PSDI would save industry \$162 million per year. Those estimates indicated that the net average saving to industry would be between \$100–129 million after taking into account the cost of the equipment and required validation.

The report also analyzes the number of injuries from mechanical power presses. There are a number of data series, each with its advantages and disadvantages. The lowest estimate is 64 amputations and 65 other serious injuries per year based on reports to OSHA. The Bureau of Labor Statistics (BLS) estimate is 211 amputations and 832 injuries per year in a category somewhat broader than mechanical power presses.

The report also discusses why third party validation was not implemented. That approach has worked in other areas and was recommended by many experts. However, there are liability concerns and some of the validation criteria may have been too restrictive.

The report summarizes the nine comments. Five of the commenters

recommended updating to ANSI B.11.1–2001 because they believed that would not only safely permit PSDI without validation, but would also have a range of other benefits. Three commenters recommended amending the PSDI provisions in some way, and one had no recommendation.

In summary, the conclusions reached by OSHA in its review of the PSDI Standard are as follows; the full report discusses these conclusions at greater length. This review of the PSDI Standard under section 610 of the Regulatory Flexibility Act finds the following:

- There is a continued need for a rule, but if the benefits OSHA sought in the 1988 rule are to be gained (*i.e.*, improved worker safety and employer productivity), the rule needs to be changed.

- The Standard, as currently written, has not been implemented and is complex.

- Paragraph (h) and § 1910.217 are significantly different from the latest revision to American National Standards Institute (ANSI) B 11.1, the industry consensus standard for mechanical power presses. The OSHA PSDI Standard does not overlap, duplicate, or conflict with other state or Federal rules.

- The technology for PSDI systems themselves has not changed since paragraph (h) was adopted in 1988, but the technology for controlling mechanical power presses has changed considerably since § 1910.217 was adopted. A number of operating modes that are not addressed in § 1910.217 are now used. Press operation is now often controlled by computers, introducing hazards that are not addressed in the Standard. Economic conditions of the industry have not changed in ways that would impact the use of power presses. There has, however, been a shift toward the use of hydraulic power presses, which are not regulated under § 1910.217.

- OSHA is considering revisions to the Standard to facilitate installation and use of PSDI on part-revolution mechanical power presses. Because the PSDI Standard has never been implemented, it has not had an economic impact on small entities. OSHA continues to believe that PSDI, if safely implemented, could provide economic benefits to employers and safety and health benefits to employees (*e.g.*, reduction of fatigue).

Furthermore, this review of the PSDI Standard under section 5 of Executive Order 12866, finds the following:

- The PSDI Standard has not been implemented. OSHA conducted this

review to identify the problems with the Standard so that the Standard could be revised.

- The Standard is compatible with other OSHA standards. No other OSHA standard addresses the use of PSDI systems.

- The Standard has not met the President's priorities to the extent that it has not produced the benefits sought; that is, allowing industry to use a system that would increase productivity and improve safety for employees. OSHA is considering revisions to the Standard to encourage implementation.

- The Standard has been ineffective because it has not been implemented. OSHA is considering revision of the Standard.

Based on analyses and information obtained during this Section 610 review, OSHA has decided on Option 1, to update all of § 1910.217 to ANSI B.11.1—2001 or something quite similar. Implementing this option would address industry concerns that the mechanical power presses standards (§ 1910.217) is out-of-date and could be made safer. Five of the nine respondents who commented on this Section 610 review, in response to OSHA's August 28, 2002 **Federal Register** Notice, recommended that OSHA replace the entire mechanical power press standard with ANSI B 11.1—2001. PSDI is an integral part of that ANSI standard, and there is no validation requirement. Furthermore, many in the field believe this updating is overdue, that there would be a range of benefits, and that it would lead to implementation of PSDI.

**Authority:** This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to section 610 of the Regulatory Flexibility Act (5 U.S.C. 610) and section 5 of Executive Order 12866 (59 FR 51724, October 4, 1993).

Signed at Washington, DC this 2nd day of June, 2004.

**John L. Henshaw,**

*Assistant Secretary of Labor.*

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