

April 14, 2009

Oregon OSHA - Proposed Changes Federal Amendments to the Practice of Vertical Tandem Lift (VTL) In Longshoring and Marine Terminals

This rulemaking is to keep Oregon OSHA in harmony with recent changes to Federal OSHA's standards.

In this rulemaking, Oregon OSHA is issuing revisions and additions to the Marine Terminals and Longshoring Standards (29 CFR Parts 1917 and 1918) that reflect Federal OSHA's new requirements for the practice of lifting two intermodal containers together, one on top of the other, connected by semiautomatic twist locks (SATLs). This practice is known as a Vertical Tandem Lift (VTL). The final standard permits VTLs of no more than two, empty containers provided that certain safeguards are followed. These revisions and additions focus on the reduction of employee death and injury achieved by providing safe work practices for employers who choose to perform VTLs.

OR-OSHA proposes to adopt the changes in Division 5, Maritime Activities as published in the December 10, 2008 Federal Register.

When does this happen: Adoption tentatively will be June 2009

To get a copy: Our web site – www.orosha.org Rules/Compliance, then Proposed Rules
Or call the Oregon OSHA Resource Center at 503-947-7447

To comment: Department of Consumer and Business Services/Oregon OSHA
350 Winter Street NE
Salem OR 97301-3882
E-mail – tech.web@state.or.us
Fax – 503-947-7461

Comment period closes: May 27, 2009

OR-OSHA contact Kathleen Kincade, Central Office @ 503-947-7452;
or email at kathleen.kincade@state.or.us

Note: In compliance with the Americans with Disabilities Act (ADA), this publication is available in alternative formats by calling 503-378-3272.

Secretary of State
NOTICE OF PROPOSED RULEMAKING*

A Statement of Need and Fiscal Impact accompanies this form.

Department of Consumer and Business Services/Oregon OSHA
Agency and Division

OAR 437
Administrative Rules Chapter Number

Sue Joye 350 Winter Street NE Salem OR 97301-3882
Rules Coordinator Address

503-947-7449
Telephone

RULE CAPTION

Propose to adopt new federal amendments to the practice of vertical tandem lift in Longshoring and Maritime Terminals.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

AMEND: OAR 437-005-0002, 437-005-0003.

ORS 654.025(2) and 656.726(4)

Stat. Auth.

Other Authority

ORS 654.001 through 654.295

Stats. Implemented

RULE SUMMARY

This rulemaking is to keep Oregon OSHA in harmony with recent changes to Federal OSHA's standards.

In this rulemaking, Oregon OSHA is issuing revisions and additions to the Marine Terminals and Longshoring Standards (29 CFR Parts 1917 and 1918) that reflect Federal OSHA's new requirements for the practice of lifting two intermodal containers together, one on top of the other, connected by semiautomatic twist locks (SATLs). This practice is known as a Vertical Tandem Lift (VTL). The final standard permits VTLs of no more than two, empty containers provided that certain safeguards are followed. These revisions and additions focus on the reduction of employee death and injury achieved by providing safe work practices for employers who choose to perform VTLs.

OR-OSHA proposes to adopt the changes in Division 5, Maritime Activities as published in the December 10, 2008 Federal Register.

Please visit our web site www.orosha.org Click 'Rules/Compliance' in the left vertical column and view our proposed, adopted, and final rules.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the *Oregon Bulletin* at least 14 days before the hearing.

The agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

/s/Michael D. Wood
Signature

May 27, 2009

Last Day for Public Comment

Last day to submit written comments to the Rules Coordinator

Michael D. Wood
Printed name

4/13/2009
Date

*The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00pm on the preceding workday. ARC 923-2005

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Consumer and Business Services/Oregon OSHA

Agency and Division

OAR 437

Administrative Rules Chapter Number

In the Matter of:

Amending OAR 437-005-0002, 437-005-0003.

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Propose to adopt new federal amendments to the practice of vertical tandem lift in Longshoring and Maritime Terminals.

Statutory Authority: ORS 654.025(2) and 656.726(4)

Stats. Implemented: ORS 654.001 through 654.295

Need for the Rule(s):

Federal OSHA enforces maritime standards offshore in all States and provides onshore coverage of maritime activities in Federal OSHA States and in Oregon – among certain other State Plan States. Oregon OSHA's standards must be at least as effective as Federal OSHA, therefore we propose to adopt these rules as they appear in the December 10, 2008 Federal Register

Documents Relied Upon, and where they are available:

Federal Register, December 10, 2008, volume 73, number 238, p.75246.

http://www.osha.gov/FedReg_oshapdf/FED20081210.pdf

Fiscal and Economic Impact, including Statement of Cost of Compliance:

Executive Order (E.O.) 12866 and the Regulatory Flexibility Act (RFA) require Federal agencies to analyze the costs, benefits, and other consequences and impacts, including small business impacts, of their regulatory actions. Federal OSHA has determined that this new rule is not an "economically significant action" under E.O.12866, a "major rule" under the RFA, nor a "significant Federal intergovernmental mandate" under the Unfunded Mandates Reform Act of 1995.

Federal OSHA has determined that, with full compliance under the final rule, no future injuries or fatalities are expected to occur while performing VTLs, and thus has not included such costs in this analysis.

How were small businesses involved in the development of this rule?

As required by the Regulatory Flexibility Act (RFA), Federal OSHA has assessed the potential impacts of the final standard on small entities. Federal OSHA profiled three industry codes likely to be affected by the new provisions: NAICS #488310, port & harbor operations; NAICS #483111, deep sea freight transportation; and NAICS #483113, coastal & Great Lakes freight transportation. Federal OSHA "can say with some certainty that it expects the cost savings of VTLs to exceed employer costs, but cannot present an exact estimate of how the affected industries will respond to the final standard, which only permits and does not require VTLs of empty containers."

(Per 73 FR, 75285, Final Economic Analysis and Regulatory Flexibility Analysis), "...even if costs exceeded benefits, the practice is economically feasible since the standard permits but does not require VTLs.

Federal OSHA certifies that the final standard does not substantially impact a significant number of small entities" nor does it "impose any net compliance costs on any small employer."

Administrative Rule Advisory Committee consulted?: No.

If not, why?: The nature of this rulemaking does not necessitate committee input at the state level. Federal OSHA has jurisdiction of maritime standards in Oregon.

/s/Michael D. Wood

Authorized Signer

Michael D. Wood

Printed name

4/13/2009

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.
ARC 925-2005