

rules addressing the handling of VTLs in marine cargo handling regulated in 29 CFR parts 1917 and 1918. The rules when final will be codified into the applicable section of the Code of Federal Regulations.

The 26 States or U.S. Territories with their own OSHA approved occupational safety and health plans must develop comparative standards applicable to both the private and public (State and local government employees) sectors within six months of the publication date of a permanent final Federal rule or show OSHA why there is no need for action, *e.g.*, because an existing state standard covering this area is already "at least as effective as" the new Federal standard. Three States and territories cover only the public sector (Connecticut, New York, and New Jersey).

Currently five States (California, Minnesota, Oregon, Vermont, and Washington) with their own State plans cover private sector onshore maritime activities. Federal OSHA enforces maritime standards offshore in all States and provides onshore coverage of maritime activities in Federal OSHA States and in the following State Plan States: Alaska, Arizona, Connecticut (plan covers only State and local government employees), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Jersey (plan covers only State and local government employees), New Mexico, New York (plan covers only State and local government employees), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in those States.

IX. Federalism

The standard has been reviewed in accordance with Executive Order 13132 (64 FR 43255; August 10, 1999) regarding federalism. This Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States before taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the OSH Act expresses Congress' clear intent to preempt State

laws relating to issues with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act, a State can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan-States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards.

The Federal standards on longshoring and marine terminals operations address hazards which are not unique to any one state or region of the country. Nonetheless, those States that have elected to participate under section 18 of the OSH Act would not be preempted by this final regulation and would be able to deal with special, local conditions within the framework provided by this performance-oriented standard while ensuring that their standards are at least as effective as the Federal standard.

X. Unfunded Mandates

For the purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, this rule does not include any federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than \$100 million.

List of Subjects

29 CFR Part 1917

Freight, Incorporation by reference, Longshore and harbor workers, Occupational safety and health, Reporting and recordkeeping requirements.

29 CFR Part 1918

Freight, Incorporation by reference, Longshore and harbor workers, Occupational safety and health, Reporting and recordkeeping requirements, Vessels.

XI. Authority and Signature

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), Secretary's Order 5-2002 (67 FR 65008), and 29 CFR part 1911.

Signed at Washington, DC, this 10th day of September, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

For the reasons stated in the preamble, the Agency proposes to amend 29 CFR parts 1917 and 1918 as follows:

PART 1917—MARINE TERMINALS

1. The authority citation for part 1917 is revised to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 6-96 (62 FR 111), or 5-2002 (67 FR 65008), as applicable; and 29 CFR part 1911.

Section 1917.28, also issued under 5 U.S.C. 553.

Section 1917.29, also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. 1801-1819 and 5 U.S.C. 553).

2. In § 1917.2, add the definitions of *Liftlock* and *Vertical tandem lift* (VTL) in alphabetical order to read as follows:

§ 1917.2 Definitions.

* * * * *

Liftlock means a semi-automatic twistlock or other inter-box connector that is used to couple intermodal containers vertically together so that they may be handled as one unit.

* * * * *

Vertical tandem lift (VTL) means the operation of lifting two intermodal containers that are coupled together vertically (one on top of the other).

3. In § 1917.3, revise the first sentence of paragraph (a)(3) and the second sentence of paragraph (a)(4), and add new paragraph (c) to read as follows:

§ 1917.3 Incorporation by reference.

(a) * * *

(3) The materials listed in paragraphs (b) and (c) of this section are incorporated by reference in the corresponding sections noted as they exist on the date of approval, and a notice of any change in these materials will be published in the **Federal Register**. * * *

(4) * * * The materials are available for purchase at the corresponding addresses of the private standards organizations noted in paragraphs (b) and (c) of this section. * * *

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(c) The following material is available for purchase from the ISO Central Secretariat, International Organization for Standardization (ISO), 1, rue de Varembeé, Case postale 56 CH-1211 Geneva 20, Switzerland: