



Exempt Action Final Regulation Agency Background Document

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| Agency name | Virginia Department of Labor and Industry/Safety and Health Codes Board |
| Virginia Administrative Code (VAC) citation | 16VAC25-120-1917.71 |
| Regulation title | Terminals Handling Intermodal Containers or Roll-on Roll-off Operations; Vertical Tandem Lifts, Public Sector Only |
| Action title | Final Rule for Terminals Handling Intermodal Containers or Roll-on Roll-off Operations; Vertical Tandem Lifts, Public Sector Only |
| Final agency action date | June 5, 2014 |
| Document preparation date | June 12, 2014 |

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

In 2009, federal OSHA issued new provisions in the Marine Terminals Standard (Part 1917) to regulate the use of Vertical Tandem Lifts (“VTLs”). Those new requirements were related to the practice of a container crane lifting two empty intermodal containers together, one on top of the other, connected by semiautomatic twistlocks (SATLs) (See photo 1). This practice is known as a vertical tandem lift. The 2009 final rule permitted VTLs of no more than two such empty containers provided certain safeguards were followed. [79 FR 22018]

Currently, federal OSHA has implemented a court-ordered remand of §1917.71(i)(9), as applied to ship-to-shore Vertical Tandem Lifts (VTLs), and has removed paragraph (i)(10) of §1917 which prohibited the lifting of platform containers also called “flat racks” as part of a VTL. Platform containers are without

sides, ends and roof, and are used for odd-sized cargo which does not fit on or in any other type of container. (See photo 2)

Additionally, federal OSHA has revised the scope of the VTL standard in the introductory text to paragraph (i) of §1917.71 to make clear that vertical tandem lifts of platform containers are not covered. Consequently, federal OSHA believes that the only reasonable way to implement the decision of the U.S. Court of Appeals for the District of Columbia Circuit, which vacated the provision banning VTLs of platform containers, is to: 1) exempt VTLs of platform containers from the scope of §1917.71(i) in addition to removing existing §1917.71(i)(10), which prohibited the lifting of platform containers as part of a VTL; and 2) add a new paragraph in §1917.71(i)(9) to make the inspection requirements in §1917.71(i)(9) inapplicable to ship-to-shore VTLs. The final rule codifies the Court’s action. [79 FR 22019]

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On June 5, 2014, the Safety and Health Codes Board adopted federal OSHA’s final rule and remand of Terminals Handling Intermodal Containers or Roll-on Roll-off Operations; Vertical Tandem Lifts, Public Sector Only, §1917.71(i), as published in 79 FR 22018 on April 21, 2014, with an effective date of September 1, 2014.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

This regulatory action will have no impact on the institution of the family and family stability.

**16VAC25-120-1917.71(i), Terminals Handling Intermodal Containers or Roll-on Roll-Off Operations;
Vertical Tandem Lifts, Public Sector Only, § 1917.71 (i); Final Rule; Remand**

As Adopted by the
Safety and Health Codes Board

Date: June 5, 2014



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: September 1, 2014

**16VAC25-120-1917.71(i), Terminals Handling Intermodal Containers or Roll-on Roll-Off Operations;
Vertical Tandem Lifts, Public Sector Only, §1917.71(i)**

When the regulations, as set forth in the Final Rule and Remand for Terminals Handling Intermodal Containers or Roll-on Roll-Off Operations; Vertical Tandem Lifts, Public Sector Only, §1917.71(i), are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms

VOSH Equivalent

29 CFR

VOSH Standard

Assistant Secretary

Commissioner of Labor and Industry

Agency

Department

July 21, 2014

September 1, 2014

§ 1917.71 Terminals handling intermodal containers or roll-on roll-off operations.

(i) *Vertical tandem lifts.* The following requirements apply to operations involving the lifting of two or more intermodal containers by the top container (vertical tandem lifts or VTLs). These requirements do not apply to operations involving the lifting of two or more interconnected platform containers.

(9) (vii) The requirements of paragraph (i)(9) of this section do not apply to ship-to-shore VTLs.

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PART 1917—MARINE TERMINALS

■ 2. Section 1917.71 is amended by revising paragraph (i) introductory text, adding paragraph (i)(9)(vii), and removing paragraph (i)(10) to read as follows: