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OSHA Conforms to US Court of Appeals Remand Order

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Acting on a Remand Order issued by the US Court of Appeals for the DC Circuit, *National Maritime Safety Association v. OSHA*, 649 F.3d 743, 753-54 (DC Cir. 2011), OSHA has published a revised final regulation (79 FR 22018) effecting the manner in which intermodal cargo containers may be hoisted in a vertical tandem configuration (one atop the other; joined at their four (4) corner fittings by specially-designed “interbox connectors”) to and from commercial trading vessels. Over 90 percent of the volume of goods imported to and exported from the U.S. moves within these instruments of international trade.

The Court found OSHA’s original final regulations for the vertical tandem lifting (VTL) of intermodal containers (73 FR 75246) too restrictive and not fully supported by the weight of evidence present within the public record of the rulemaking proceeding.

Pointing to feasibility issues, the Court instructed OSHA to remove the final rule’s requirement that containers so assembled and being discharged from commercial vessels had to be inspected before hoisting. Also, owing to an evidentiary slight of hand that the Court described as “*a Switcheroo*”, OSHA was also instructed to remove the application of the final regulation to platform-based intermodal containers.

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