

Occupational Safety & Health/Worker's Compensation

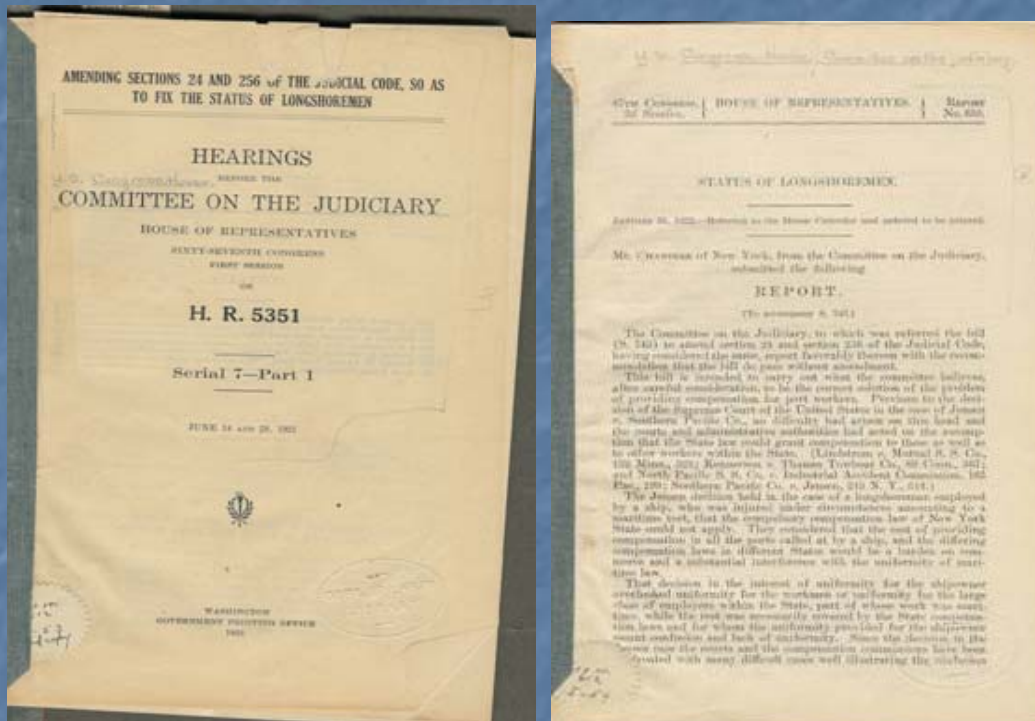
In The U.S. Marine Cargo Handling Industry



A History and Overview for Port Industry
Executives



The Jensen Era

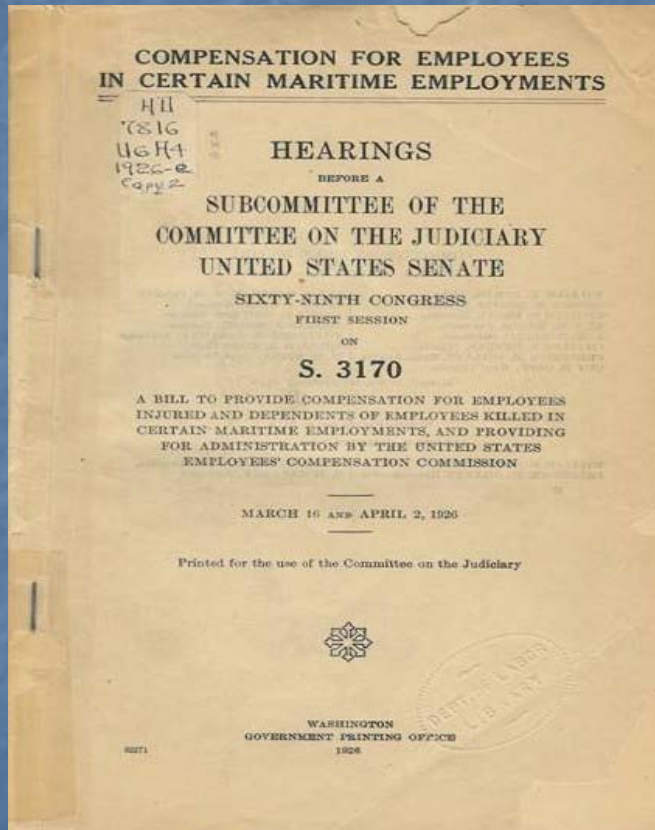


- Southern Pacific v Jensen (1917)
- Knickerbocker v Stewart (1920)
- Washington v Dawson (1924)

Memorializing an internecine turf fight between the U.S. Congress and the Supreme Court, in determining the method (or indeed the existence) of worker's compensation for injuries sustained "***on the navigable waters.***"



LHWCA of 1927



- Creates a Federal scheme for the payment of compensation to marine cargo handling and shipyard workers injured *"on the navigable waters."*
- Clarified by the Supreme Court in:
 - ✓ T. Smith & Son v Taylor (1928)
 - ✓ Minnie v Port Huron Terminals (1935)



(1951) Organized Labor Initiates Attempts to “Perfect” the LHWCA

[COMMITTEE PRINT]

82d CONGRESS } HOUSE OF REPRESENTATIVES } REPORT
2d Session } No. _____

SAFETY IN LONGSHORE AND HARBOR WORK

The subcommittee of the Committee on Education and Labor, to which was referred the bill (H. R. 5796) to amend section 41 of the Longshoremen's and Harbor Workers' Compensation Act of 1927, as amended, to provide a system of safety rules, regulations, and safety inspection and training, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill be considered favorably by the full Committee on Education and Labor and be reported to the House of Representatives for passage.

The subcommittee amendment is as follows:

On page 5, line 8 of the bill, strike out the comma after the word “amended” and insert in lieu thereof a period and strike out all of line 9.

Hearings on H. R. 5796 were held on March 19, 20, and April 3, 1952, by the subcommittee. The subcommittee held hearings on H. R. 4032 on June 5, 11, 12, 19, 20, 22, and 26, 1951. Members of the subcommittee observed the longshoring operations at Cleveland, Ohio, Chicago, Ill., and in the Boston, Mass., and city of New York harbors. As a result of the subcommittee's consideration of H. R. 4032, certain amendments thereto were adopted, and the chairman of the subcommittee was instructed to introduce a new bill which was designated H. R. 5796.

HISTORICAL BACKGROUND

The Longshoremen's and Harbor Workers' Compensation Act was passed by Congress on March 4, 1927, to provide compensation for disability or death resulting from injury to employees, other than officers and crew members of vessels, who are injured while employed on the navigable waters of the United States and who are not covered by the compensation laws of any State. Upon its enactment, the bill was administered by the United States Employees Compensation Commission. On June 16, 1946, the Commission was abolished and its functions transferred to the Federal Security Agency. Effective May 24, 1950, the functions previously transferred to the Federal Security Agency were transferred by Reorganization Plan No. 19 to the United States Department of Labor. This transfer was made to provide for better administrative efficiency. The functions and personnel relating to safety were placed under the Director of the Bureau of Labor Standards and the existing safety services of the Bureau have been utilized to bolster accident prevention programs on a voluntary basis in the stevedoring industry. The Director of Employees Compensation administers the compensation features of this law.

98325—52

- ILA/ILWU

- Boilermakers

- Steelworkers

- Higher than usual number of explosions in shipyards.

- Increased trade volumes w/more cargo gear failures.

- Political incentives to reseat a Democratic president



The Political Landscape

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DAVID N. HENDERSON, *Assistant General Counsel*

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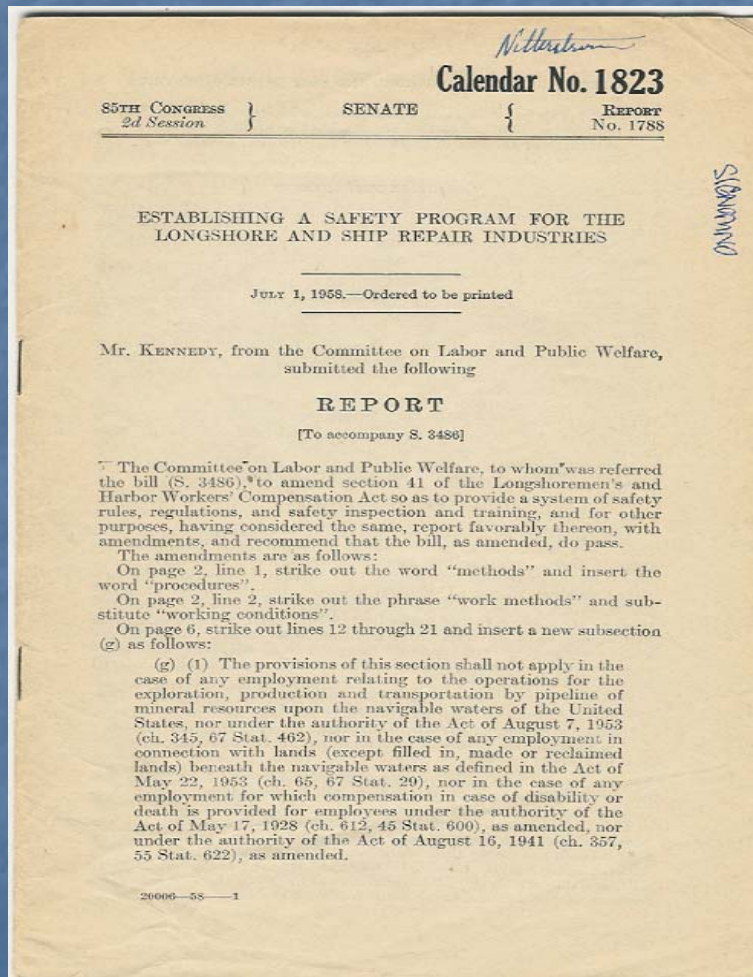
SUBCOMMITTEE ON SAFETY IN LONGSHORE AND HARBOR WORK

JOHN F. KENNEDY, Massachusetts, *Chairman*

CLEVELAND M. BAILEY, West Virginia	CARROLL D. KEARNS, Pennsylvania
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The 85th Congress



- Sustained organized labor efforts to widen LHWCA coverage and increase safety protection.
- Political impetus now gradually translated into labor support for one prospective Democratic presidential candidate.



The 1958 LHWCA Amendments

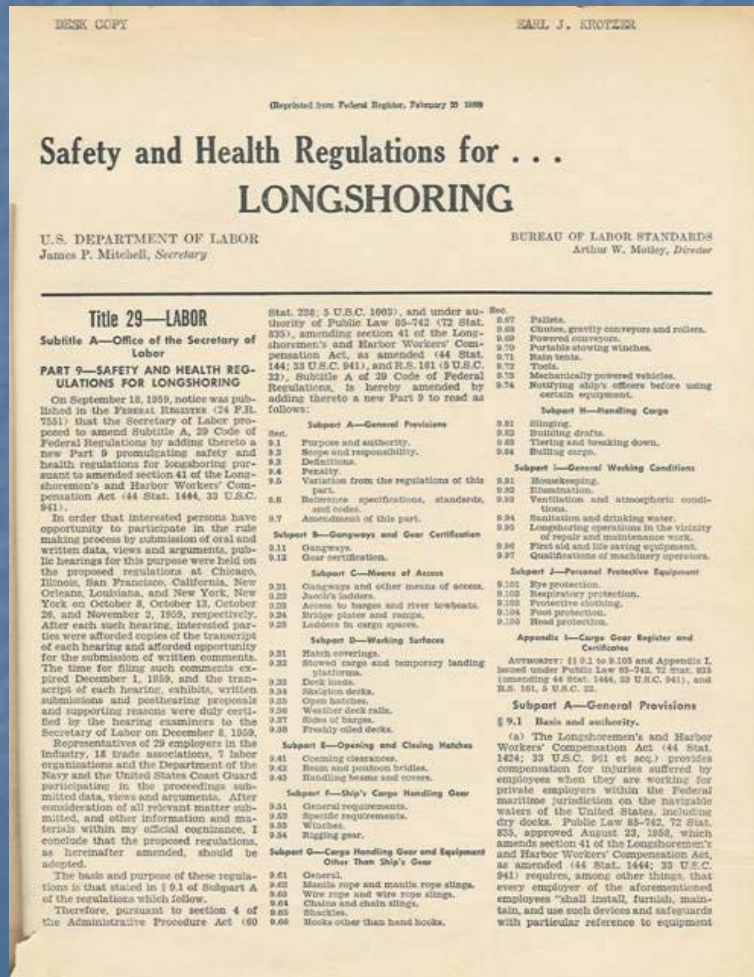
[Public Law 85-742]



- Political compromise brokered by Lyndon Johnson, with JFK as strongest proponent.
- Resisted by Ike; needed by Richard Nixon in his (1960) bid for Presidency.
- Expanded §41 of LHWCA, to provide for safety standards, enforcement and training.
- Put in the enforcement hands of DOL (LSB).



The Longshoring Industry Safety Regulations



- Published in the Federal Register, February 20, 1960

- Applicability tracked the jurisdiction of enabling legislation (LHWCA), i.e., to work “on the navigable waters”

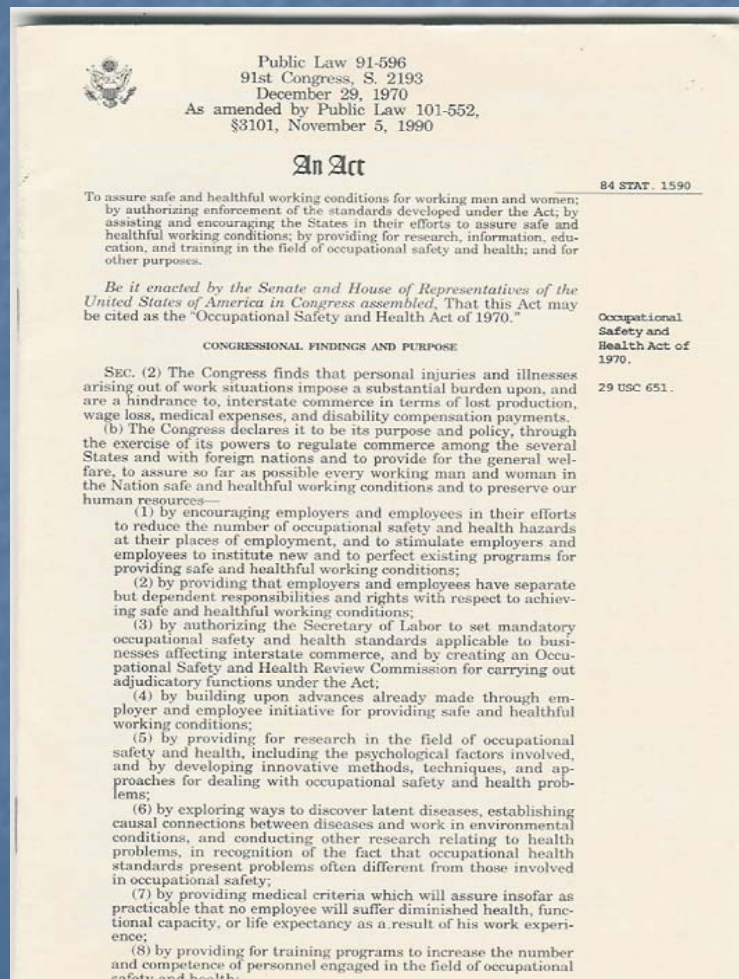
- Work on terminals therefore, not covered





The Occupational Safety and Health Act of 1970

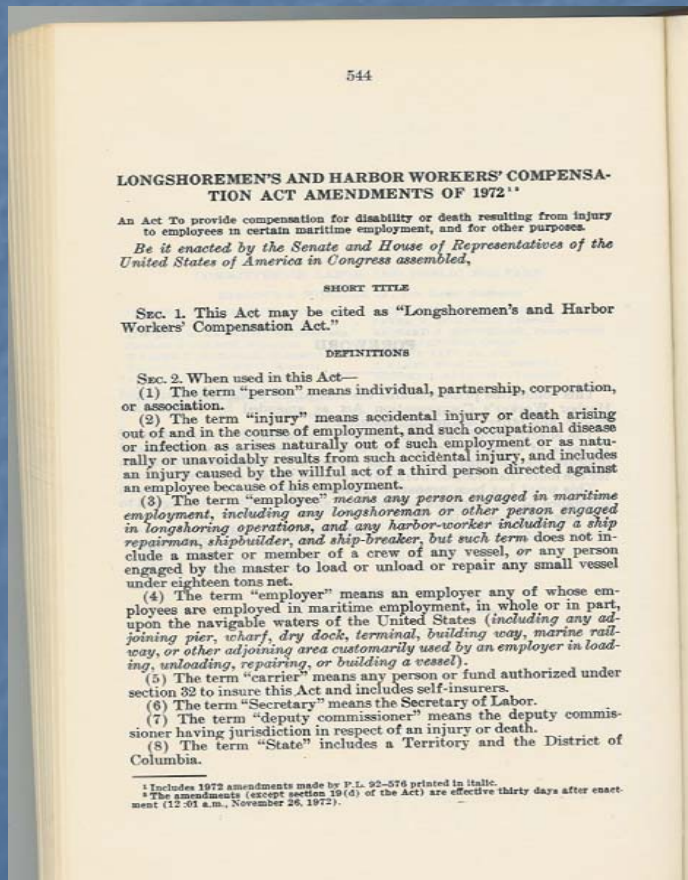
[Public Law 91-596]



- Signed into law by Richard Nixon, December 29, 1970
- Extended to all workplaces
- Adopted all existing Federal Safety Standards (including the Longshoring safety regulations)
- “on the navigable waters” limitations of LHWCA (for safety/health) no longer apply



LHWCA Extensions of 1972



- Brings Federal program of compensation ashore
- Now additionally covers "related employments"
- Substantially boosts amount of compensation paid to recipients (66 2/3% of average wkly wage)

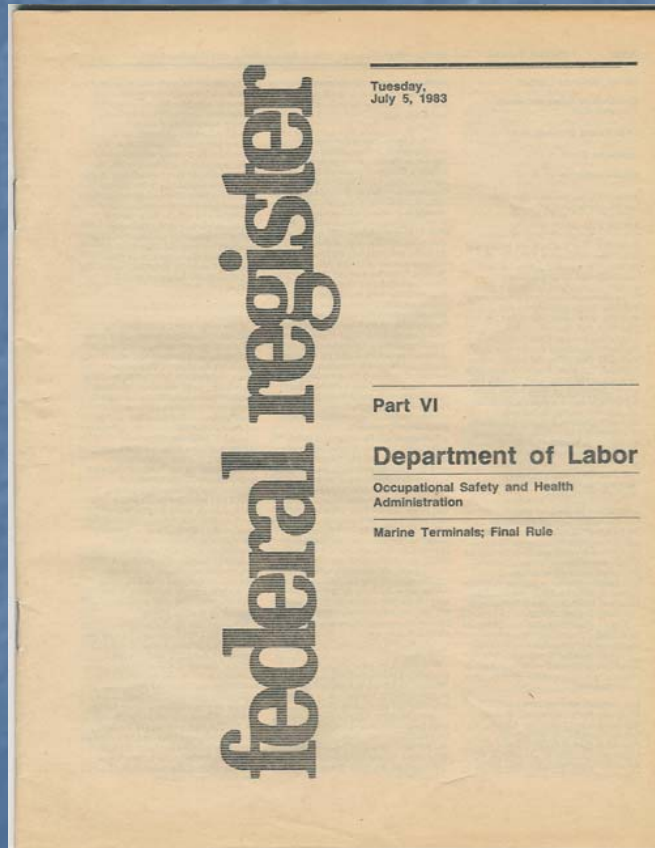


Applicability of OSHA Regulations to Marine Cargo Handling Operations

- Vertical Rules:** Designed specifically for application to a given industry. Applies in lieu of any other rule. In the case of marine terminal operations, 29 CFR Part 1917. In the case of longshoring operations (aboard vessels), 29 CFR Part 1918.
- Horizontal Rules:** All regulations contained in 29 CFR Part 1910, OSHA's Rules for General Industry



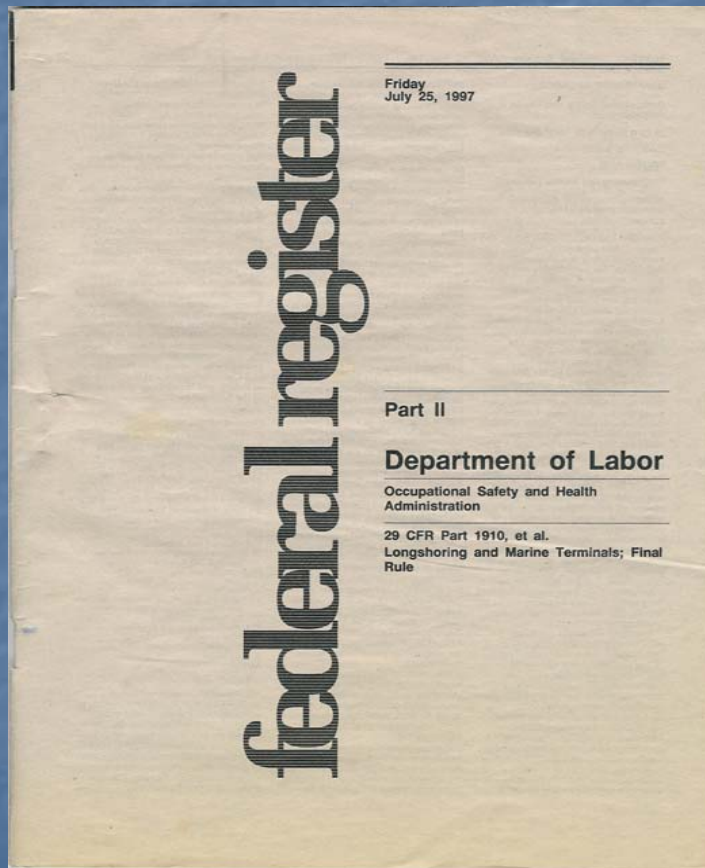
The Marine Terminals Standard



- 29 CFR Part 1917 reduced the volume of applicable regulations by 75%
- Custom tailored in unison with labor & management interests
- Included criteria for safely conducting modern cargo handling operations
- Applies from gate to gangway



Modernizing Part 1918 Standards



- Afloat marine cargo handling rules had very little change since the 1960's
- Needed to subjectively track, without any variance, the shoreside (Part 1917) rules



Human Suffering



Financial Loss

(With Loss Of Life)



Greater Financial Loss



Accidents: Direct/Indirect Costs

- Worker's Comp: "The Manual Rate"
- All In Costs: 4-15 Percent of Total Payroll
- Therein lies the difference between profit and loss in an industry with razor thin profit margins



Labor Relations

ILA seeks safety talks

Journal of Commerce

Wednesday, December 01, 2004

By: The JOURNAL of COMMERCE ONLINE

The president of the International Longshoremen's Association has called for port safety meetings with employers and federal agencies following recent accidents that killed a union dockworker in New Jersey and injured three others in South Carolina.

"Safety remains a top priority with the ILA as it is with our employers," said ILA President John Bowers. "However, something is wrong when ILA members are killed or critically injured at the work sites. We need to address this problem immediately."



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