

# **Occupational Safety & Health/Worker's Compensation**

## **In The U.S. Marine Cargo Handling Industry**



**An Overview and a History for Port  
Industry Executives**

# Appreciating The Financials

## The Hierarchy of Recurring Costs

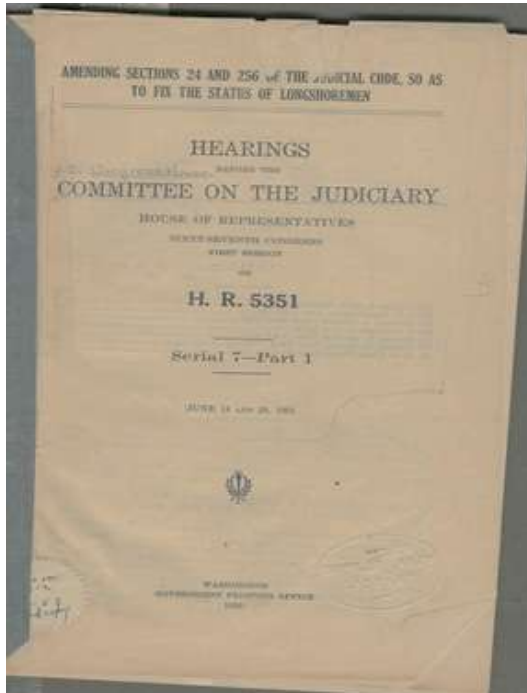
- 1). Payroll (Labor)
- 2). Insurance (General Liability/Worker's Compensation)

# A Little U.S. History

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[With Somewhat Comparable Circumstances at Canadian,  
Caribbean, Central & South American AAPA Member Ports]

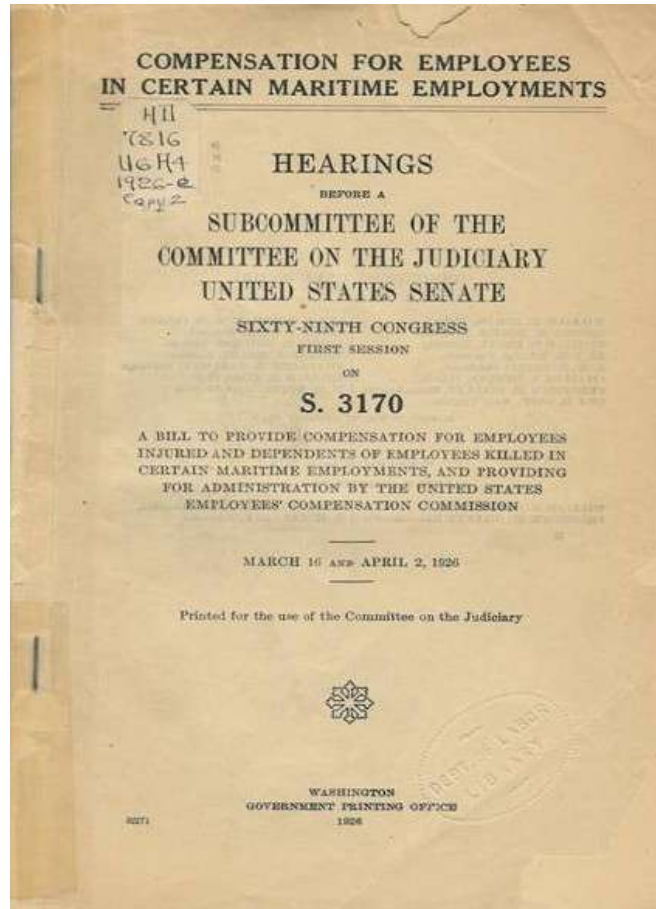
# The Jensen Era



- 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” of the U.S.”**

# LHWCA of 1927

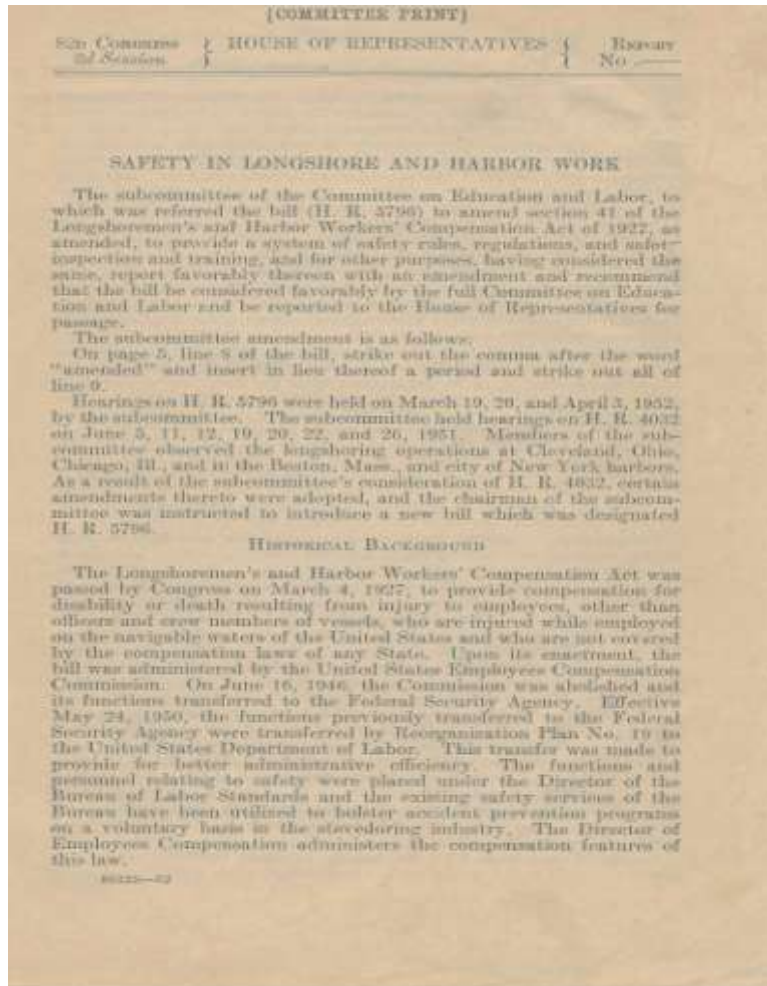


- **Creates a Federal scheme for the payment of compensation to marine cargo handling and shipyard workers injured “*on the navigable waters of the United States.*”**

**Clarified by the Supreme Court in:**

- **T. Smith & Son v. Taylor (1928)**
- **Minnie v. Port Huron Terminals (1935)**

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



- ILA/ILWU
  - Boilermakers
  - Steelworkers
  - Carpenters
- Higher than usual number of explosions in shipyards.
  - Increased trade volumes w/more cargo gear failures.
  - Post 1953: Political incentives to reseat a Democratic president

# The Political Landscape

## U.S. House of Representatives (1955)

### COMMITTEE ON EDUCATION AND LABOR

GRAHAM A. BARDEN, North Carolina, *Chairman*

AUGUSTINE B. KELLEY, Pennsylvania

ADAM C. POWELL, Jr., New York

JOHN S. WOOD, Georgia

JOHN F. KENNEDY, Massachusetts

WINGATE H. LUCAS, Texas

CLEVELAND M. BAILEY, West Virginia

LEONARD IRVING, Missouri

CARL D. PERKINS, Kentucky

CHARLES R. HOWELL, New Jersey

TOM STEED, Oklahoma

ROY W. WIER, Minnesota

BOYD TACKETT, Arkansas

ERNEST GREENWOOD, New York

SAMUEL K. McCONNELL, Jr., Pennsylvania

RALPH W. GWINN, New York

WALTER E. BREHM, Ohio

WINT SMITH, Kansas

CARROLL D. KEARNS, Pennsylvania

THRUSTON BALLARD MORTON, Kentucky

THOMAS H. WERDEL, California

HAROLD H. VELDE, Illinois

CHARLES E. POTTER, Michigan

RICHARD B. VAIL, Illinois

E. Y. BERRY, South Dakota

FRED G. HURSEY, *Chief Clerk*

JOHN O. GRAHAM, *Minority Clerk*

JOHN S. FORSYTHE, *General Counsel*

DAVID N. HENDERSON, *Assistant General Counsel*

RUSSELL C. DERRICKSON, *Investigator*

### SUBCOMMITTEE ON SAFETY IN LONGSHORE AND HARBOR WORK

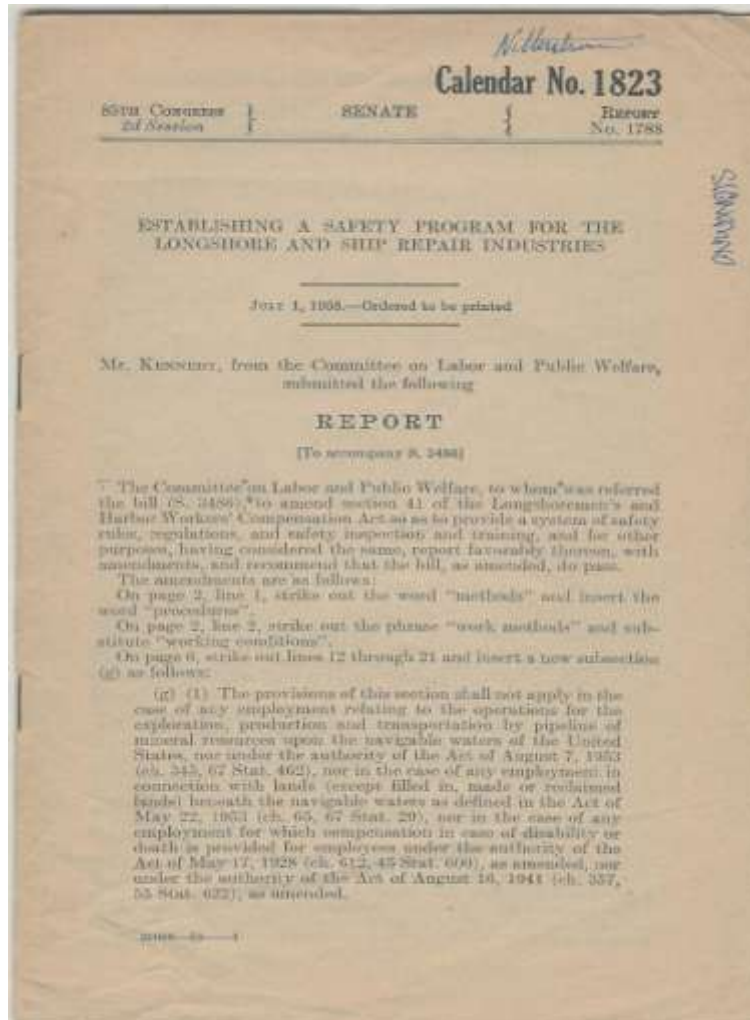
JOHN F. KENNEDY, Massachusetts, *Chairman*

CLEVELAND M. BAILEY, West Virginia

CARROLL D. KEARNS, Pennsylvania



# The 85th Congress (1957-1958)



- 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/ The Kennedy Maritime Safety Act]

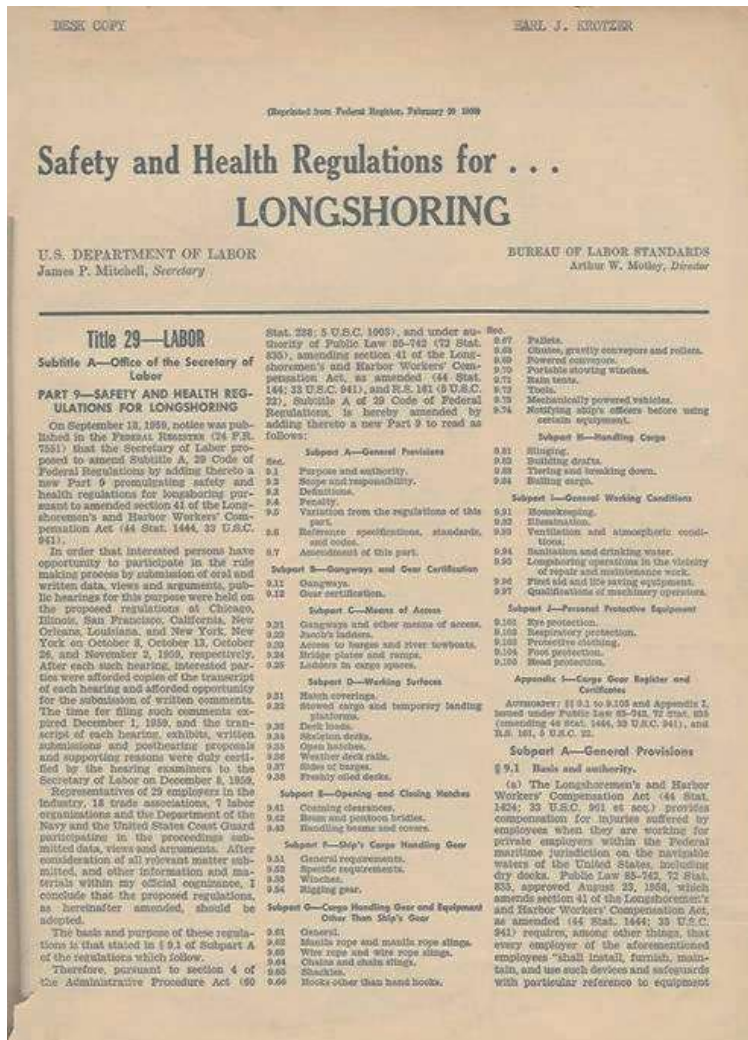


- Political compromise brokered by Senate Majority Leader Lyndon Johnson, with JFK as strongest proponent.
- Resisted by Ike; needed by Richard Nixon to appease Labor in his (1960) bid for Presidency.



- Expanded §41 of LHWCA, to provide for safety standards, enforcement and training.
- Put in the enforcement hands of DOL (LSB).

# The 1<sup>st</sup> U.S. Federal 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

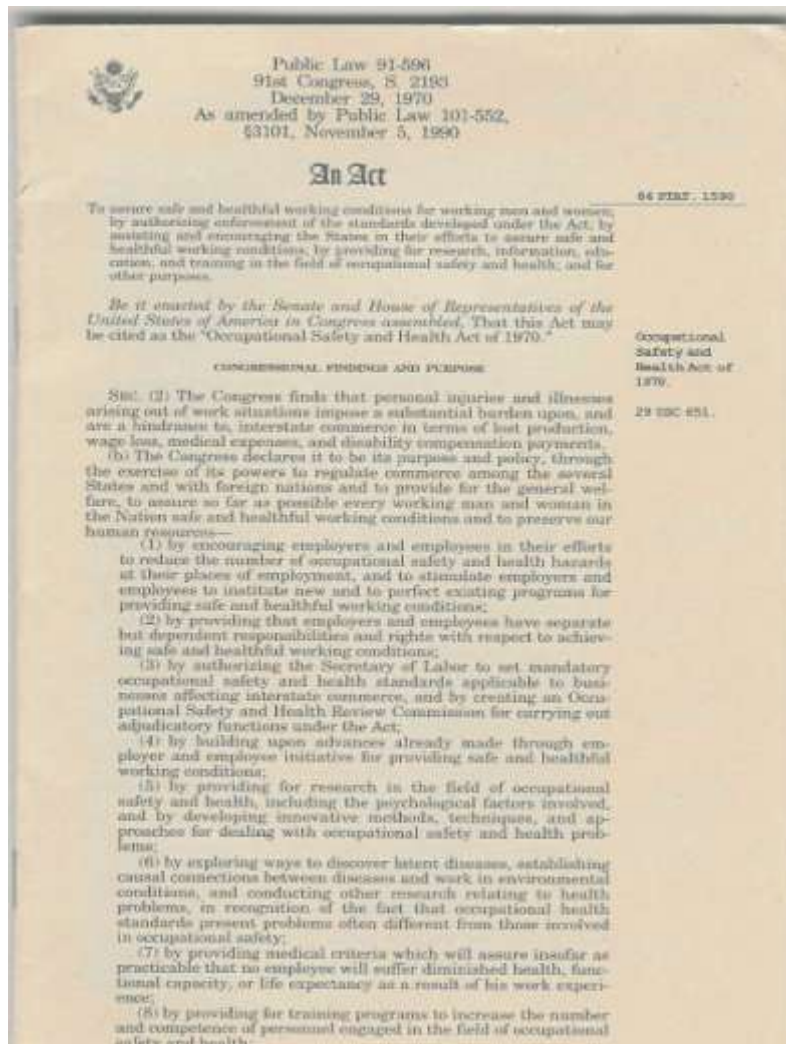
Other Laborers  
and Industrial  
Workers Wanted  
To Be Protected  
On The Job, As  
Well.

To Achieve That  
Goal, They Must  
Take Their  
Message To  
Congress:



# The Occupational Safety & Health Act of 1970

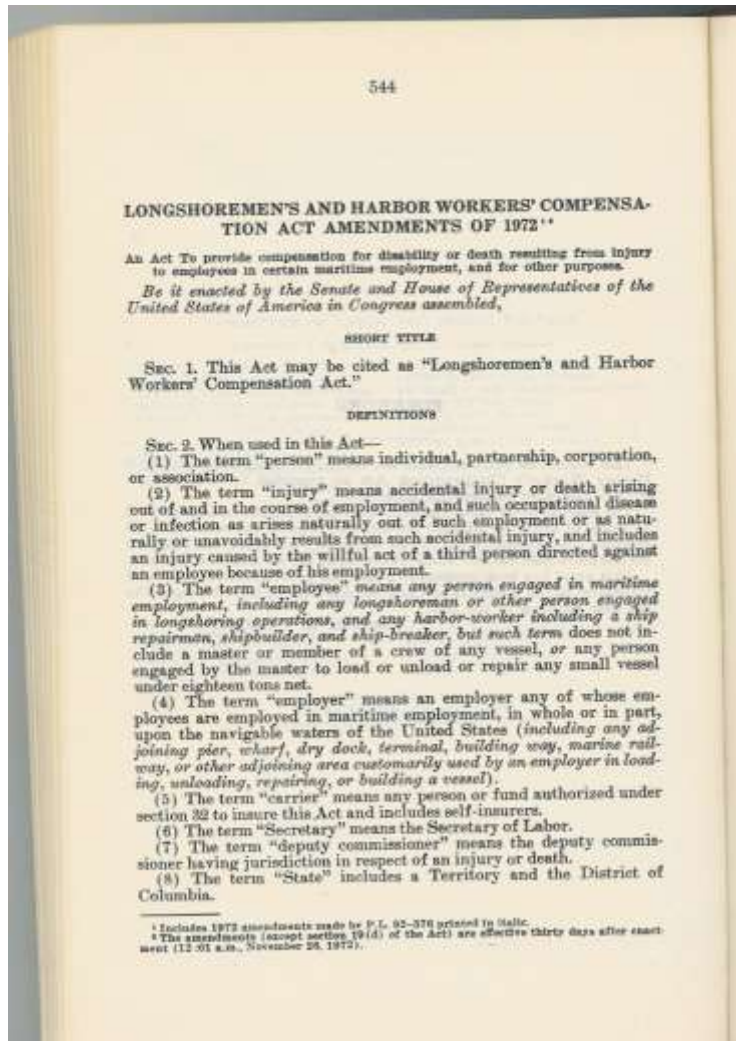
## [Public Law 91-596]



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



# LHWCA Extensions of 1972



- Brings existing Federal program of compensation ashore
- Now, additionally covers  
“*related employments*”
- Substantially boosts amount of compensation paid to recipients (two-thirds of average weekly wage)

# Applicability of Initial OSHA Regulations (1971) to Marine Cargo Handling Operations

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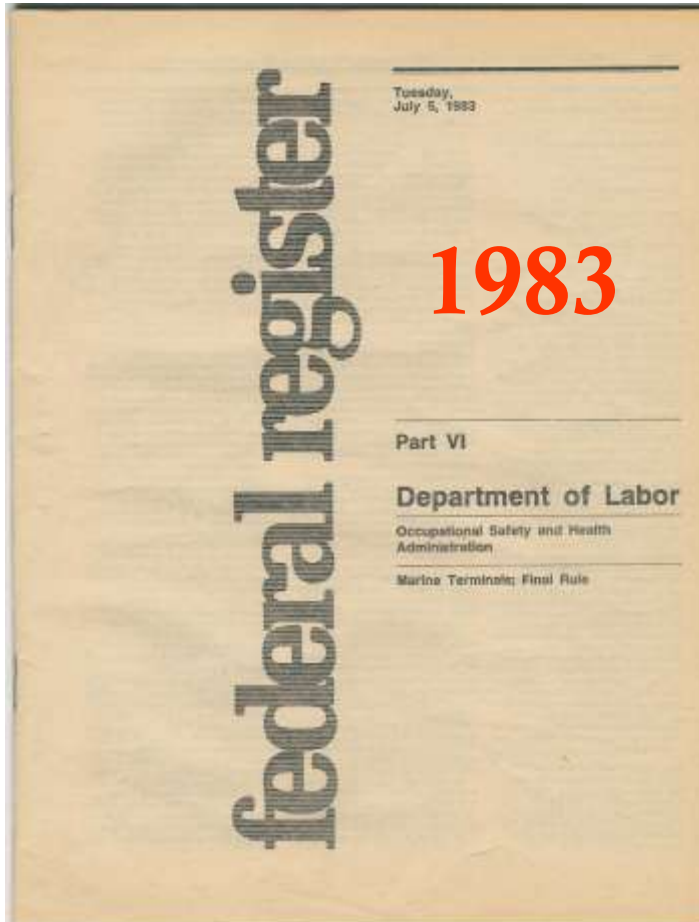
Vertical Rules: Designed specifically for application to a given industry. Applies in lieu of any other rule. In the case of longshoring operations (aboard vessels), 29 CFR Part 1918.

Horizontal Rules: All regulations contained within 29 CFR Part 1910, OSHA's Rules for General Industry.

Confusing & Contradictory.... Labor & Management Rebel!

# The Marine Terminals Standard

## [29 CFR 1917]

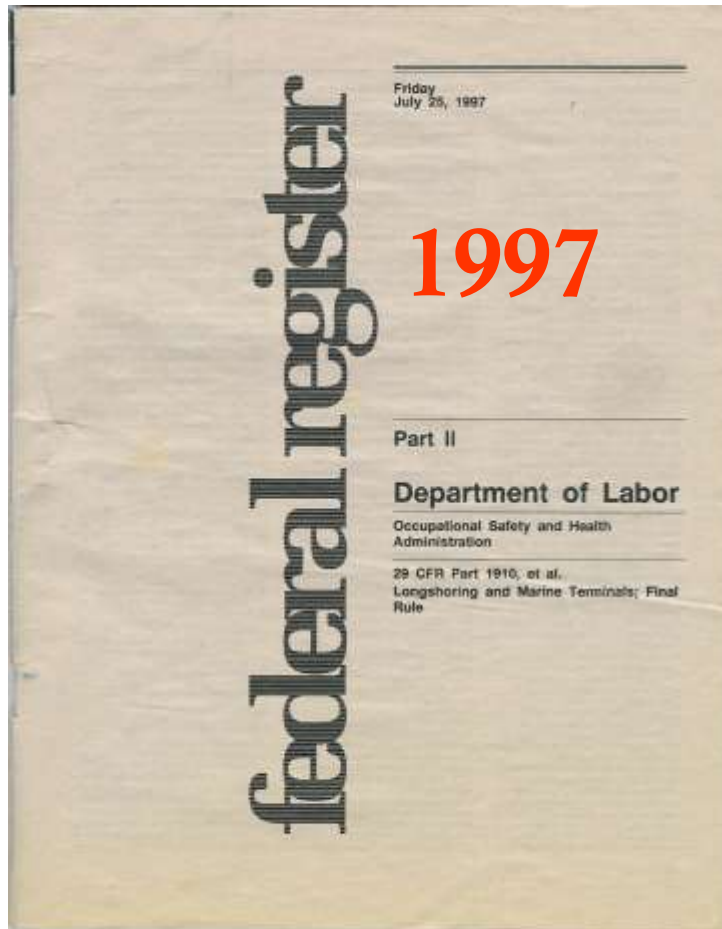


- 29 CFR Part 1917 reduced the volume of applicable regulations by 75%
- Custom tailored in unison with labor, management and public interests
- Included criteria for safely conducting all modern cargo handling operations
- Applies from gate to gangway



# “Updated” Longshoring Standards

## [29 CFR Part 1918]



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

# Lots Of Regulations...

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## What's Their Purpose?

# Decrease Human Suffering



# Offset Financial Loss





# Prevent Even Greater Financial Loss



# Accidents: **Direct/Indirect Costs**

- **Worker's Comp: “The Manual Rate”**
- **All-In Costs: 10 to 15 Percent of Total Payroll\***
- **Therein lies the difference between profit and loss in an industry with razor thin profit margins**

**\*Estimated at \$2.8 Billion for C/Y 2010 [All U.S. Coasts]**

## COMPENSATION RATES (LHWCA)

Point in Time	NAWW	Max\$	Min\$	Pct+
10/01/99 - 09/30/00	450.64	901.28	225.32	3.39
10/01/00 - 09/30/01	466.91	933.82	233.46	3.61
10/01/01 - 09/30/02	483.04	966.08	241.52	3.45
10/01/02 - 09/30/03	498.27	996.54	249.14	3.15
10/01/03 - 09/30/04	515.39	1030.78	257.70	3.44
10/01/04 - 09/30/05	523.58	1047.16	261.79	1.59
10/01/05 - 09/30/06	536.82	1073.64	268.41	2.53
10/01/06 - 09/30/07	557.22	1114.44	278.61	3.80
10/01/07 - 09/30/08	580.18	1160.36	290.09	4.12
10/01/08 - 09/30/09	600.31	1200.62	300.16	3.47
10/01/09 - 09/30/10	612.33	1224.66	306.17	2.00
10/01/10 - 09/30/11	628.42	1256.84	314.21	2.63
10/01/11 - 09/30/12	647.60	1295.20	323.80	3.05



# Labor Relations



# Public Relations

# HazMat Cargoes

Published Weekly  
By the Halifax Herald  
Subscription Price  
\$1.00 per Annum  
\$0.25 per Month  
Single Copies 5c

THE HALIFAX HERALD  
JAN. 1917

HALIFAX WRECKED  
More Than One Thousand Killed In This City,  
Many Thousands Are Injured And Homeless.

MORE than one thousand dead and probably five thousand injured, many of them fatally, is the result of the explosion yesterday on French steamship Mont Blanc, loaded with nitroglycerine and trinitrotoluol. All of Halifax north and west of the depot is a mass of ruins and many thousands of people are homeless. The Belgian Relief steamer Ince, coming down from Bedford Basin, collided with the Mont Blanc, which immediately sank and was holed in the Port No. 5 and exploded. Buildings over a great area collapsed, burying men, women and children. The boats and smaller vessels were engulfed and then a great wave washed up over Campbell Road. Five trucks and a bus became uncontrollable, stopping the work of police. Not a house in Halifax escaped some damage, and the region bounded on the east by the harbor, south by North street and west by Windsor street, is absolutely devastated.

THE wounded and homeless are in different institutions and homes over the city. The Halifax Herald is collecting information regarding the missing, and citizens who have victims of the disaster at their homes are requested to telephone to The Herald office. Hundreds of the bodies which were taken from the ruins are unrecognizable and morgues have been opened in different parts of the city. Citizens' committees are being formed for rescue work. Bulletins will be issued through the day giving information for the assistance of those who have lost relatives and friends. While practically every house in the city is damaged, those who are able to give any temporary accommodation are asked to notify some of the committees.

Military and naval patrols are keeping order and superintending the rescue work.

THE STORY OF THE DISASTER  
The explosion occurred at about 10:10 a.m. on the morning of January 6, 1917. The ship, the Mont Blanc, was carrying a large cargo of explosives, including nitroglycerine and trinitrotoluol. The ship was bound for Halifax from Antwerp, Belgium. The explosion occurred in the harbor, near the waterfront. The ship sank, and a large fire broke out. The fire spread to the buildings on the waterfront, and a large area of the city was destroyed. The explosion killed more than one thousand people and injured many thousands more. The damage to property was also enormous. The explosion was the worst disaster in the history of Halifax.

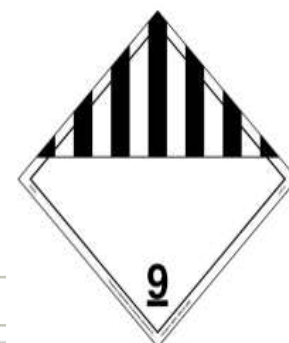
THE RESULTS OF THE DISASTER  
The explosion has left a large area of the city in ruins. The buildings on the waterfront have been destroyed, and the area around them is a mass of rubble. The fire has spread to the buildings on the waterfront, and a large area of the city is now a mass of ruins. The explosion has killed more than one thousand people and injured many thousands more. The damage to property was also enormous. The explosion was the worst disaster in the history of Halifax.

THE RESCUE WORK  
The rescue work is being carried on by the military and naval forces. The military is providing food and shelter for the homeless, and the naval forces are providing medical aid to the wounded. The Halifax Herald is also helping in the rescue work by collecting information regarding the missing and by providing information regarding the damage to property.









# Goal No. 1

Accorded The Highest Priority, Taking Precedence Over Any  
Other Consideration:

**All Workers Get To Go Home In The Same Good  
Physical Condition They Came To Work In.**

No Ocean Carrier, Marine Terminal Operator, Stevedore,  
Labor Union or Port Authority Can Possibly Hope To  
Attain the Desired Increased Levels of Efficiency,  
Productivity or Profit, Without First Attaining Consistent  
Success In Achieving Goal No. 1.



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# Fatal Accidents at US Ports CY 2011

# 24 January 2011

## Terminal Island, CA

A longshore worker riding her motorcycle on a break was struck and killed Friday morning by a truck whose driver made an unsafe left turn in front of her, Los Angeles traffic detectives said.

Georgia Fisher, 47, of Long Beach was traveling south on Earle Street at about 8 a.m. when a tractor-trailer truck made a left turn into the APL terminal. There are no traffic controls at the location and Fisher struck the side of the cab, said South Traffic Division Detective Supervisor Rodney Jones.

# 28 January 2011

## Jacksonville, FL

According to recent news reports from Jacksonville, Florida, 58-year-old Anthony Roberts died on Saturday, Jan. 22 when the crane he was operating was struck by large pieces of an old gantry, resulting in the crane turning onto its side, trapping and crushing the crane's cab.

The fatal crane accident occurred at JaxPort when Roberts was using a crawler crane to dismantle a large port crane that had been sold and retired.

A contractor of the buyer of the port crane was hired to conduct the demolition of the crane. Roberts was employed by that contractor. He was pronounced dead at the scene of the accident.

25 February 2011  
New Orleans, LA

**BE CAREFUL OUT THERE!, the ILA's quarterly safetynewsletter, reports with great regret the on-the-job death of Shawn Bertrand of New Orleans. A member of ILA Local Union 2036, Brother Bertrand was servicing a reach stacker's steer wheel tire at a New Orleans marine terminal when it violently exploded.**

**This quarter's newsletter reminds all mechanics at ILA Local Unions in each District of the critical importance in fully deflating all tires before attempting to perform any service.**

# 28 March 2011

## Portsmouth, VA

**A 38-year-old female worker was killed Monday morning in a forklift accident at APM Terminals Virginia in Portsmouth, according to a spokesperson with the port authority.**

**Investigators have determined that the employee, identified as Paula Bellamy, of Portsmouth, was working as a "slinger" or guide to a crane operator when she was struck by a forklift. She died as a result of injuries suffered in the accident, officials said.**

**According to Jan Westerbeck with the Portsmouth Police Department, the forklift operator's vision was obstructed by some containers when he hit the victim.**

# 30 March 2011

## Miami, FL

Last Wednesday, March 30, 2011, a member of ILA Local Union 1416 was tragically killed when the nose end of a refrigerated container/chassis assembly stowed on an internal ramp aboard the Ro-Ro/Lo-Lo vessel **SEABOARD VICTORY** fell upon him.

Longshoreman Kevin Whyms had just released the last remaining chain securing device that had lashed the equipment in place during its ocean transit when, according to reports from individuals then aboard the ship, the equipment rolled forward, separated from its independent front end support, collapsed its landing gear and fell upon Mr. Whyms, who had been in a crouching position underneath.

# 12 April 2011

## Baltimore, MD

A man died from his injuries Tuesday morning in an industrial accident involving the truck he was driving.

The accident happened at about 10:15 a.m. at the Dundalk Marine Terminal in the 2700 block of Broening Highway.

By the evening, Maryland Transportation Authority police only identified the person as a 46-year-old Maryland Environmental Service employee.

According to a preliminary investigation, the man parked the vehicle by berth 14 and got out. Seconds later, he realized that the truck was rolling and tried to jump back in the vehicle and stop it.



# 14 April 2011

## Port Everglades, FL

A man working at **Port Everglades** was killed Thursday afternoon when he was struck by a tractor-trailer, the Broward Sheriff's Office said.

The victim, Antonio Del Hierro Perez, 29, of **Hialeah**, was assisting a truck driver who was picking up a container, Concepción said. Del Hierro was standing in front of the container as the driver, Osmar Figueredo, 37, of Hialeah, backed up to load it onto the bed of the tractor-trailer.

Figueredo's truck struck Del Hierro, pinning him between the trailer and the container, Concepción said. Broward Sheriff Fire Rescue pronounced Del Hierro dead at the scene.

# 4 May 2011

## Miami, FL

Longshoreman and ILA member Ossie L. Hyman was fatally injured while on the stern ramp of the Ro-Ro Vessel **SEABOARD SPIRIT** today, when he was crushed between a moving vehicle and the ramp's starboard bulkhead.

Sources at Miami report that Mr. Hyman was working as a striker/lasher aboard the vessel, and had released several binders used to secure a container/chassis combination to the deck of the ship. Apparently, one such binder remained secured and when the operator of the vehicle attempted to drive the cargo down the ramp the unit shifted, pinning Mr. Hyman between the box and the bulkhead.

# 11 August 2011

## Port Elizabeth, NJ

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Don Delia, a member of ILA Local Union 1804-1, was electrocuted and died within the machinery house of a container gantry crane today.

Mr. Delia has just finished changing out a fuse, and was testing the reworked high voltage circuit when he made contact with a live electrical part.

# 12 August 2011

## Philadelphia, PA

An investigation was continuing into the rare death Friday afternoon of a longshoreman at the Packer Avenue Marine Terminal in South Philadelphia, where workers were devastated by the loss of a colleague. "He's one of our superstars," Tom Holt Jr., who runs the marine terminal, said of Charles DiRago, 54, of Wenonah. "It's a big loss for us."

DiRago was apparently backed over by a yard tractor at the beginning of a work shift.

# 17 August 2011

## New Orleans, LA

A 22-year-old longshoreman died Wednesday after he fell about 40 to 45 feet into the cargo hold of a ship berthed at the Louisiana Avenue Wharf along the Mississippi River in New Orleans.

The apparent industrial accident occurred about 6 p.m. The body of Samuel Montgomery II was removed from the site shortly after 7 p.m., said John Gagliano, chief investigator for the Orleans Parish Coroner's Office.



# 20 August 2011

## Philadelphia, PA

A longshoreman fell to his death in a breakbulk ship Saturday in the second fatal accident in eight days on the Philadelphia waterfront.

Vernon Knight, 54, a member of International Longshoremen's Association Local 1291, fell from a tween deck into a ship's hold, said Robert Palaima, president of Delaware River Stevedores.

The ship, the M/V Rickmers New Orleans, was handling project cargo at Tioga Marine Terminal. Palaima said the accident is under investigation.

# 01 September 2011

## Brownsville, TX

OSHA is now on the scene and investigating an accidental death at the Port of Brownsville.

Authorities say it happened late Thursday afternoon when a 59-year-old Olmito man was loading a shipment of beams at the port. They say Guillermo Gonzalez was crushed to death.

# Typified Accidents

[07] [CAMERA07] [Thu Oct 23 2008] [09:08:02]









*“Be Careful Out  
There.....!”*

[www.blueoceana.com](http://www.blueoceana.com)

