

§1985.109. The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including:

(1) Reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

(2) The amount of back pay, with interest;

(3) Compensation for any special damages sustained as a result of the discharge or discrimination; and

(4) Litigation costs, expert witness fees, and reasonable attorney fees.

(d) Within seven days after filing a complaint in federal court, a complainant must file with OSHA, the ALJ, or the ARB, depending on where the proceeding is pending, a copy of the file-stamped complaint. In all cases, a copy of the complaint also must be served on the OSHA official who issued the findings and/or preliminary order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

**§ 1985.115 Special circumstances; waiver of rules.**

In special circumstances not contemplated by the provisions of these rules, or for good cause shown, the ALJ or the ARB on review may, upon application, after three days' notice to all parties, waive any rule or issue such orders that justice or the administration of CFPA requires.

**PART 1986—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER THE EMPLOYEE PROTECTION PROVISION OF THE SEAMAN'S PROTECTION ACT (SPA), AS AMENDED**

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AUTHORITY: 46 U.S.C. 2114; 49 U.S.C. 31105; Secretary's Order 1-2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order 1-2010 (Jan. 15, 2010), 75 FR 3924-01 (Jan. 25, 2010).

SOURCE: 78 FR 8402, Feb. 6, 2013, unless otherwise noted.

**Subpart A—Complaints, Investigations, Findings, and Preliminary Orders**

**§ 1986.100 Purpose and scope.**

(a) This part sets forth the procedures for, and interpretations of, the Seaman's Protection Act (SPA), 46 U.S.C. 2114, as amended, which protects a seaman from retaliation because the seaman has engaged in protected activity pertaining to compliance with maritime safety laws and accompanying regulations. SPA incorporates the procedures, requirements, and rights described in the whistleblower provision of the Surface Transportation Assistance Act (STAA), 49 U.S.C. 31105.

(b) This part establishes procedures pursuant to the statutory provisions set forth above for the expeditious handling of retaliation complaints filed by seamen or persons acting on their behalf. These rules, together with those rules codified at 29 CFR part 18, set forth the procedures for submission of complaints, investigations, issuance of findings and preliminary orders, objections to findings, litigation before administrative law judges (ALJs), post-

hearing administrative review, withdrawals and settlements, and judicial review and enforcement. In addition, these rules provide the Secretary's interpretations on certain statutory issues.

**§ 1986.101 Definitions.**

As used in this part:

(a) *Act* means the Seaman's Protection Act (SPA), 46 U.S.C. 2114, as amended.

(b) *Assistant Secretary* means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under the Act.

(c) *Business days* means days other than Saturdays, Sundays, and Federal holidays.

(d) *Citizen of the United States* means:

(1) An individual who is a national of the United States as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(22)) or a corporation, partnership, association, or other business entity if the controlling interest is owned by citizens of the United States. The controlling interest in a corporation is owned by citizens of the United States if:

(i) Title to the majority of the stock in the corporation is vested in citizens of the United States free from any trust or fiduciary obligation in favor of a person not a citizen of the United States;

(ii) The majority of the voting power in the corporation is vested in citizens of the United States;

(iii) There is no contract or understanding by which the majority of the voting power in the corporation may be exercised, directly or indirectly, in behalf of a person not a citizen of the United States; and

(iv) There is no other means by which control of the corporation is given to or permitted to be exercised by a person not a citizen of the United States.

(2) Furthermore, a corporation is only a citizen of the United States if:

(i) It is incorporated under the laws of the United States or a State;

(ii) Its chief executive officer, by whatever title, and the chairman of its board of directors are citizens of the United States; and

(iii) No more of its directors are non-citizens than a minority of the number necessary to constitute a quorum.

(e) *Complainant* means the seaman who filed a SPA whistleblower complaint or on whose behalf a complaint was filed.

(f) *Cooperated* means any assistance or participation with an investigation, at any stage of the investigation, and regardless of the outcome of the investigation.

(g) *Maritime safety law or regulation* includes any statute or regulation regarding health or safety that applies to any person or equipment on a vessel.

(h) *Notify* or *notified* includes any oral or written communications.

(i) *OSHA* means the Occupational Safety and Health Administration of the United States Department of Labor.

(j) *Person* means one or more individuals or other entities, including but not limited to corporations, companies, associations, firms, partnerships, societies, and joint stock companies.

(k) *Report* or *reported* means any oral or written communications.

(l) *Respondent* means the person alleged to have violated 46 U.S.C. 2114.

(m) *Seaman* means any individual engaged or employed in any capacity on board a vessel owned by a citizen of the United States. The term includes an individual formerly performing the work described above or an applicant for such work.

(n) *Secretary* means the Secretary of Labor or persons to whom authority under the Act has been delegated.

(o) *State* means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(p) *Vessel* means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

(q) *Vessel owner* includes all of the agents of the owner, including the vessel's master.

(r) Any future amendments to SPA that affect the definition of a term or terms listed in this section will apply in lieu of the definition stated herein.