

in the United States district court for the District of Columbia. Whenever any person has failed to comply with a preliminary order of reinstatement, or a final order, including one approving a settlement agreement, issued under CFPA, the person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the appropriate United States district court.

§ 1985.114 District court jurisdiction of retaliation complaints.

(a) The complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy, either:

(1) Within 90 days after receiving a written determination under § 1985.105(a) provided that there has been no final decision of the Secretary; or

(2) If there has been no final decision of the Secretary within 210 days of the filing of the complaint.

(b) At the request of either party, the action shall be tried by the court with a jury.

(c) A proceeding under paragraph (a) of this section shall be governed by the same legal burdens of proof specified in § 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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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, the rules in this part 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 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)); a corporation incorporated under the

laws of the United States or a State; a corporation, partnership, association, or other business entity if the controlling interest is owned by citizens of the United States or whose principal place of business or base of operations is in a State; or a governmental entity of the Federal Government of the United States, of a State, or of a political subdivision of a State. The controlling interest in a corporation is owned by citizens of the United States if a majority of the stockholders are citizens of the United States.

(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 U.S.-flag vessel or any other vessel owned by a citizen of the United States, except members of the Armed Forces. 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.