

Dated: February 27, 2015.

**Kevin J. Wolf,**

*Assistant Secretary for Export Administration.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 895

#### Banned Devices

##### *CFR Correction*

In Title 21 of the Code of Federal Regulations, Parts 800 to 1299, revised as of April 1, 2014, on page 594, in § 895.21, remove the undesignated paragraph following paragraph (d)(8).

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Part 1980

[Docket Number: OSHA-2011-0126]

RIN 1218-AC53

#### Procedures for the Handling of Retaliation Complaints Under Section 806 of the Sarbanes-Oxley Act of 2002, as Amended

**AGENCY:** Occupational Safety and Health Administration, Labor.

**ACTION:** Final rule.

**SUMMARY:** This document provides the final text of regulations governing employee protection (retaliation or whistleblower) claims under section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley or Act), which was amended by sections 922 and 929A of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank), enacted on July 21, 2010. An interim final rule (IFR) governing these provisions and request for comment was published in the **Federal Register** on November 3, 2011. Five comments were received. This rule responds to those comments and establishes the final procedures and time frames for the handling of retaliation complaints under Sarbanes-Oxley, including procedures and time frames for employee complaints to the Occupational Safety

and Health Administration (OSHA), investigations by OSHA, appeals of OSHA determinations to an administrative law judge (ALJ) for a hearing de novo, hearings by ALJs, review of ALJ decisions by the Administrative Review Board (ARB) (acting on behalf of the Secretary of Labor), and judicial review of the Secretary of Labor's final decision. It also sets forth the Secretary of Labor's interpretations of the Sarbanes-Oxley whistleblower provision on certain matters.

**DATES:** This final rule is effective on March 5, 2015.

**FOR FURTHER INFORMATION CONTACT:** Brian Broecker, Directorate of Whistleblower Protection Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-4624, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693-2199; email: [OSHA.DWPP@dol.gov](mailto:OSHA.DWPP@dol.gov). This is not a toll-free number. This **Federal Register** publication is available in alternative formats. The alternative formats available are large print, electronic file on computer disk (Word Perfect, ASCII, Mates with Duxbury Braille System) and audiotape.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Sarbanes-Oxley was first enacted on July 30, 2002. Title VIII is designated as the Corporate and Criminal Fraud Accountability Act of 2002. Section 806, codified at 18 U.S.C. 1514A, is the "whistleblower provision," which provides protection to employees against retaliation by certain persons covered under the Act for engaging in specified protected activity. The Act generally was designed to protect investors by ensuring corporate responsibility, enhancing public disclosure, and improving the quality and transparency of financial reporting and auditing. The whistleblower provision is intended to protect employees who report fraudulent activity and violations of Securities Exchange Commission (SEC) rules and regulations that can harm innocent investors in publicly traded companies.

Dodd-Frank amended the Sarbanes-Oxley whistleblower provision, 18 U.S.C. 1514A. The regulatory revisions described herein reflect these statutory amendments and also seek to clarify and improve OSHA's procedures for handling Sarbanes-Oxley whistleblower claims, as well as to set forth OSHA's interpretations of the Act. To the extent possible within the bounds of applicable statutory language, these

revised regulations are designed to be consistent with the procedures applied to claims under other whistleblower statutes administered by OSHA, including the Surface Transportation Assistance Act of 1982 (STAA), 29 CFR part 1978; the National Transit Systems Security Act (NTSSA) and the Federal Railroad Safety Act (FRSA), 29 CFR part 1982; the Consumer Product Safety Improvement Act of 2008 (CPSIA), 29 CFR part 1983; the Employee Protection Provisions of Six Environmental Statutes and Section 211 of the Energy Reorganization Act of 1974, as amended, 29 CFR part 24; the Affordable Care Act (ACA), 29 CFR part 1984; the Consumer Financial Protection Act (CFPA), 29 CFR part 1985; the Seaman's Protection Act (SPA), 29 CFR part 1986; and the FDA Food Safety Modernization Act (FSMA), 29 CFR part 1987.

##### **II. Summary of Statutory Procedures and Statutory Changes to the Sarbanes-Oxley Whistleblower Provision**

Sarbanes-Oxley's whistleblower provision, as amended by Dodd-Frank, includes procedures that allow a covered employee to file a complaint with the Secretary of Labor (Secretary)<sup>1</sup> not later than 180 days after the alleged retaliation or after the employee learns of the alleged retaliation. Sarbanes-Oxley further provides that the rules and procedures set forth in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21), 49 U.S.C. 42121(b), govern in Sarbanes-Oxley actions. 18 U.S.C. 1514A(b)(2)(A). Accordingly, upon receipt of the complaint, the Secretary must provide written notice to the person or persons named in the complaint alleged to have violated the Act (respondent) of the filing of the complaint, the allegations contained in the complaint, the substance of the evidence supporting the complaint, and the rights afforded the respondent throughout the investigation. The Secretary must then, within 60 days of receipt of the complaint, afford the respondent an opportunity to submit a

<sup>1</sup> The regulatory provisions in this part have been written and organized to be consistent with other whistleblower regulations promulgated by OSHA to the extent possible within the bounds of the statutory language of Sarbanes-Oxley. Responsibility for receiving and investigating complaints under Sarbanes-Oxley has been delegated to the Assistant Secretary for Occupational Safety and Health. Secretary of Labor's Order No. 01-2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012). Hearings on determinations by the Assistant Secretary are conducted by the Office of Administrative Law Judges, and appeals from decisions by administrative law judges are decided by the ARB. Secretary of Labor's Order 2-2012 (Oct. 19, 2012), 77 FR 69378 (Nov. 16, 2012).