



*A bold voice for transportation workers*

April 8, 2013

OSHA Docket Office  
Docket No. OSHA-2011-0841  
U.S. Department of Labor  
Room N-2625  
200 Constitution Avenue N.W.  
Washington, DC 20210

**RE: Department of Labor, Occupational Safety and Health Administration  
Docket No. OSHA-2011-0841  
RIN 1218-AC58  
Interim Final Rule, Request for Comments:  
Procedures for the Handling of Retaliation Complaints Under the Employee  
Protection Provision of the Seaman's Protection Act (SPA), as Amended**

Dear Ms. Slavet:

On behalf of the Transportation Trades Department, AFL-CIO, (TTD), I am pleased to express our support for the Interim Final Rule (IFR) issued by the Department of Labor's Occupational Safety and Health Administration (OSHA) that would implement whistleblower protection provisions for seamen. By way of background, TTD represents 33 affiliated unions that represent workers in every mode of transportation, including those working on vessels engaged in maritime transportation.<sup>1</sup> We therefore have an interest in this rulemaking.

At the outset, we commend OSHA for promulgating this rulemaking to clarify the types of seamen whistleblower activities that are protected and to establish procedures for filing claims when such actions provoke employer retaliation. TTD and our affiliates have long advocated for strong whistleblower regulations that protect transportation workers who report safety or security violations. We believe that a safe workplace is mutually beneficial to employees and employers, and that when a violation does occur, workers should be able to report the condition with confidence that doing so will not put their jobs at risk. Unfortunately, we know this isn't always the case. Accordingly, we support this IFR to provide seamen whistleblowers a clear process to follow when they're retaliated against for taking corrective actions in unsafe work environments.

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<sup>1</sup> Attached is a list of TTD's affiliated unions.

**Transportation Trades Department, AFL-CIO**

815 16th Street NW /4th Floor /Washington DC 20006  
Tel:202.628.9262 / Fax:202.628.0391 /www.ttd.org  
Edward Wytkind, President /Larry I. Willis, Secretary-Treasurer



OSHA's IFR would implement the whistleblower protection provisions of the Seaman's Protection Act (SPA, 46 USC section 2114) as amended by section 611 of the Coast Guard Authorization Act of 2010 (P.L. 111-281). This IFR would establish procedures and timeframes for seamen to file retaliation complaints and would detail the process OSHA would use to investigate filings including an appeals process. The IFR also clarifies the seven types of whistleblower activities that are protected, including reporting or about to report a safety violation; refusing to work if doing so would cause serious injury; accurately reporting hours of duty; and other actions that shed light on work-related injuries or safety violations.

We believe that taken together, the identification of protected activities and establishment of the retaliation claims process would help protect seamen who try to prevent injuries or report dangerous violations. In particular, we support OSHA's determination to implement the SPA's whistleblower provisions so that internal complaints are protected. Given the unique characteristics of their job, seamen working on vessels at sea may be unable to report safety violations to agency officials, instead reporting the condition to their superiors to rectify the situation. Such internal communication aids in keeping vessels safe and is generally protected by the seven activities identified in this rulemaking. OSHA states that it will read the SPA broadly to ensure that seamen's internal complaints are protected "as fully as possible." TTD strongly supports this decision in order to provide seamen the same protections afforded to workers covered by other whistleblower statutes.

Relatedly, this rulemaking provides clarity on the prohibition of retaliation against an employee who is "about to report" a violation to an agency official. Through an internal communication or other means, an employer may become aware that an employee intends to report a violation to an official. But because seamen may be unable to file a report immediately, time may pass between an employer becoming aware that a worker is "about to report" a violation and when the seaman notifies an official. To take into consideration the potential of such justified time lapses, OSHA states that it will broadly read "about to report" so that seamen are properly protected from retaliation under this covered activity. We support this determination as well.

TTD also supports the remedies available to whistleblowers whose claims are upheld by the Assistant Secretary, Administrative Law Judge and/or the Administrative Review Board. By providing that, where appropriate, the violation is rectified and that seamen whistleblowers are reinstated to their former positions with the same compensation and are provided payment of compensatory damages, the rulemaking provides valuable redress seamen may seek when they have been treated illegally.

We support this rulemaking because we believe all workers deserve to work in safe environments every day. OSHA's efforts to codify seamen whistleblower protections, and to do so in a way that closely resembles the protections afforded other transportation workers covered by other whistleblower regulations, provide clarity to workers on the actions they can take to remedy dangerous situations, while empowering them with a well-defined route to pursue when they've been wronged.

We appreciate the opportunity to submit comments on this proceeding and hope that you will take them into consideration.

Sincerely,

A handwritten signature in black ink, appearing to be 'Edward Wytkind', written in a cursive style.

Edward Wytkind  
President



## *TTD MEMBER UNIONS*

*The following labor organizations are members of and represented by the TTD:*

*Air Line Pilots Association (ALPA)*  
*Amalgamated Transit Union (ATU)*  
*American Federation of Government Employees (AFGE)*  
*American Federation of State, County and Municipal Employees (AFSCME)*  
*American Federation of Teachers (AFT)*  
*Association of Flight Attendants-CWA (AFA-CWA)*  
*American Train Dispatchers Association (ATDA)*  
*Brotherhood of Railroad Signalmen (BRS)*  
*Communications Workers of America (CWA)*  
*International Association of Fire Fighters (IAFF)*  
*International Association of Machinists and Aerospace Workers (IAM)*  
*International Brotherhood of Boilermakers, Iron Ship Builders,  
Blacksmiths, Forgers and Helpers (IBB)*  
*International Brotherhood of Electrical Workers (IBEW)*  
*International Longshoremen's Association (ILA)*  
*International Longshore and Warehouse Union (ILWU)*  
*International Organization of Masters, Mates & Pilots, ILA (MM&P)*  
*International Union of Operating Engineers (IUOE)*  
*Laborers' International Union of North America (LIUNA)*  
*Marine Engineers' Beneficial Association (MEBA)*  
*National Air Traffic Controllers Association (NATCA)*  
*National Association of Letter Carriers (NALC)*  
*National Conference of Firemen and Oilers, SEIU (NCFO, SEIU)*  
*National Federation of Public and Private Employees (NFOPAPE)*  
*Office and Professional Employees International Union (OPEIU)*  
*Professional Aviation Safety Specialists (PASS)*  
*Sailors' Union of the Pacific (SUP)*  
*Sheet Metal, Air, Rail and Transportation Worker (SMART)*  
*Transportation Communications International Union (TCU)*  
*Transport Workers Union of America (TWU)*  
*UNITE HERE!*  
*United Mine Workers of America (UMWA)*  
*United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial  
and Service Workers International Union (USW)*  
*United Transportation Union-SMART (UTU-SMART)*