

Board, any relief ordered by the ALJ, except for a preliminary order of reinstatement, is inoperative while the matter is pending before the Board. This section now further provides that, when the Board accepts a petition for review, its review of factual determinations will be conducted under the substantial evidence standard. This standard also is applied to Board review of ALJ decisions under the whistleblower provision of STAA. 29 CFR 1978.109(b)(3).

The AFA recommended that § 1979.110(a) be changed to state that a petition for review must be filed with the ARB within ten days, rather than received by the Board within 15 days to allow either party sufficient time to file without being penalized by inconsistent postal delivery. OSHA agrees that, due to the vagaries of postal delivery, the date of filing as described in this section rather than the date of the Board's receipt of the petition should be used to determine whether a petition is timely, and that ten days is sufficient time to petition for review of an ALJ decision. Only business days shall be counted in the ten days allowed for filing a petition, consistent with the Federal Rules of Civil Procedure 6(a), and paragraph (a) of this section has been changed to clarify the change from "15" to "ten" days.

The AFA also recommended that § 1979.110(c) be changed to avoid undue delay by providing that the administrative law judge's decision becomes the final order of the Secretary after 120 days if the Administrative Review Board fails to act within the 120 days. OSHA agrees that the procedure for Board review of an ALJ decision should be modified to avoid delay and prejudice to the parties, and to facilitate the issuance of a final order of the Secretary as required by the Act. The modifications to the Board review procedure in paragraphs (a) and (b) of this section, *i.e.*, discretionary review by the Board, which shall accept as conclusive ALJ findings of fact that are supported by substantial evidence, address the concerns expressed by the AFA, and the recommended change to paragraph (c) of this section is not necessary.

Section 1979.111 Withdrawal of Complaints, Objections, and Findings; Settlement

This section provides for the procedures and time periods for withdrawal of complaints, the withdrawal of findings by the Assistant Secretary, and the withdrawal of objections to findings. It also provides for approval of settlements at the

investigatory and judicial stages of the case.

The NWC commented that § 1979.111 should be modified to permit a complainant to freely withdraw his or her complaint without prejudice. OSHA believes that § 1979.111 does permit a complainant to freely withdraw his or her complaint without prejudice. The purpose of the Assistant Secretary's approval is to help ensure that the complainant's withdrawal is, indeed, made freely without threat of coercion or unlawful promise.

Section 1979.112 Judicial Review

This section describes the statutory provisions for judicial review of decisions of the Secretary and requires, in cases where judicial review is sought, the Administrative Review Board to submit the record of proceedings to the appropriate court pursuant to the rules of such court.

Section 1979.113 Judicial Enforcement

This section describes the Secretary's power under the statute to obtain judicial enforcement of orders and the terms of a settlement agreement. It also provides for enforcement of orders of the Secretary by the person on whose behalf the order was issued.

Section 1979.114 Special Circumstances; Waiver of Rules

This section provides that in circumstances not contemplated by these rules or for good cause the Secretary may, upon application and notice to the parties, waive any rule as justice or the administration of the Act requires.

The NWC commented that § 1979.114 should be deleted in its entirety because it has no basis in the statutory language. OSHA believes that the regulation should remain to give the administrative law judges and the Administrative Review Board the flexibility to take actions in unusual situations that are not contemplated by the regulations.

IV. Paperwork Reduction Act

This rule contains a reporting requirement (§ 1979.103) which was previously reviewed and approved for use by the Office of Management and Budget ("OMB") under 29 CFR 24.3 and assigned OMB control number 1218-0236 under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13).

V. Administrative Procedure Act

This rule is a rule of agency procedure and practice within the meaning of Section 553 of the Administrative Procedure Act ("APA"), 5 U.S.C.

553(b)(A). Therefore, publication in the **Federal Register** of a notice of proposed rulemaking and request for comments was not required for these regulations, which provide procedures for the handling of discrimination complaints. However, the Assistant Secretary sought and considered comments to enable the agency to improve the rules by taking into account the concerns of interested persons.

Furthermore, because this rule is procedural rather than substantive, the normal requirement of 5 U.S.C. 553(d) that a rule be effective 30 days after publication in the **Federal Register** is inapplicable. The Assistant Secretary also finds good cause to provide an immediate effective date for this rule. It is in the public interest that the rule be effective immediately so that parties may know what procedures are applicable to pending cases.

VI. Executive Order 12866; Unfunded Mandates Reform Act of 1995; Small Business Regulatory Enforcement Fairness Act of 1996; Executive Order 13132.

The Department has concluded that this rule should be treated as a "significant regulatory action" within the meaning of Section 3(f)(4) of Executive Order 12866 because AIR21 is a new program and because of the importance to FAA's airline safety program that "whistleblowers" be protected from retaliation. E.O. 12866 requires a full economic impact analysis only for "economically significant" rules, which are defined in Section 3(f)(1) as rules that may "have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities." Because the rule is procedural in nature, it is not expected to have a significant economic impact; therefore no economic impact analysis has been prepared. For the same reason, the rule does not require a Section 202 statement under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*). Furthermore, because this is a rule of agency procedure or practice, it is not a "rule" within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), and does not require Congressional review. Finally, this rule does not have "federalism implications." The rule does not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and