

responsibilities among the various levels of government” and therefore is not subject to Executive Order 13132 (Federalism).

## VII. Regulatory Flexibility Analysis

The Department has determined that the regulation will not have a significant economic impact on a substantial number of small entities. The regulation simply implements procedures necessitated by enactment of AIR21, in order to allow resolution of whistleblower complaints. Furthermore, no certification to this effect is required and no regulatory flexibility analysis is required because no proposed rule has been issued.

*Document Preparation:* This document was prepared under the direction and control of the Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor.

## List of Subjects in 29 CFR Part 1979

Administrative practice and procedure, Air carrier safety, Employment, Investigations, Reporting and recordkeeping requirements, Whistleblowing.

Signed at Washington, DC this 17th day of March, 2003.

**John L. Henshaw,**

*Assistant Secretary for Occupational Safety and Health.*

Accordingly, for the reasons set out in the preamble part 1979 of title 29 of the Code of Federal Regulations is revised to read as follows:

## PART 1979—PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER SECTION 519 OF THE WENDELL H. FORD AVIATION INVESTMENT AND REFORM ACT FOR THE 21ST CENTURY

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

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- 1979.100 Purpose and scope.
- 1979.101 Definitions.
- 1979.102 Obligations and prohibited acts.
- 1979.103 Filing of discrimination complaint.
- 1979.104 Investigation.
- 1979.105 Issuance of findings and preliminary orders.

### Subpart B—Litigation

- 1979.106 Objections to the findings and the preliminary order and request for a hearing.
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- 1979.108 Role of Federal agencies.
- 1979.109 Decision and orders of the administrative law judge.
- 1979.110 Decision and orders of the Administrative Review Board.

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- 1979.111 Withdrawal of complaints, objections, and findings; settlement.
- 1979.112 Judicial review.
- 1979.113 Judicial enforcement.
- 1979.114 Special circumstances; waiver of rules.

**Authority:** 49 U.S.C. 42121; Secretary of Labor's Order 5–2002, 67 FR 65008 (October 22, 2002).

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

#### § 1979.100 Purpose and scope.

(a) This part implements procedures under section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. 42121 (“AIR21”), which provides for employee protection from discrimination by air carriers or contractors or subcontractors of air carriers because the employee has engaged in protected activity pertaining to a violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety.

(b) This part establishes procedures pursuant to AIR21 for the expeditious handling of discrimination complaints made by employees, or by 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 under AIR21, investigations, issuance of findings and preliminary orders, objections to findings and orders, litigation before administrative law judges, post-hearing administrative review, and withdrawals and settlements.

#### § 1979.101 Definitions.

*Act* or *AIR21* means section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 106–181, April 5, 2000, 49 U.S.C. 42121.

*Air carrier* means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.

*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.

*Complainant* means the employee who filed a complaint under the Act or on whose behalf a complaint was filed.

*Contractor* means a company that performs safety-sensitive functions by contract for an air carrier.

*Employee* means an individual presently or formerly working for an air carrier or contractor or subcontractor of

an air carrier, an individual applying to work for an air carrier or contractor or subcontractor of an air carrier, or an individual whose employment could be affected by an air carrier or contractor or subcontractor of an air carrier.

*Named person* means the person alleged to have violated the Act.

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

*Person* means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any group of persons.

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

#### § 1979.102 Obligations and prohibited acts.

(a) No air carrier or contractor or subcontractor of an air carrier may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee, or any person acting pursuant to the employee's request, engaged in any of the activities specified in paragraphs (b)(1) through (4) of this section.

(b) It is a violation of the Act for any air carrier or contractor or subcontractor of an air carrier to intimidate, threaten, restrain, coerce, blacklist, discharge or in any other manner discriminate against any employee because the employee has:

(1) Provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the air carrier or contractor or subcontractor of an air carrier or the Federal Government, information relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under subtitle VII of title 49 of the United States Code or under any other law of the United States;

(2) Filed, caused to be filed, or is about to file (with any knowledge of the employer) or cause to be filed a proceeding relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under subtitle VII of title 49 of the United States Code, or under any other law of the United States;

(3) Testified or is about to testify in such a proceeding; or

(4) Assisted or participated or is about to assist or participate in such a proceeding.