

is in the public interest that the rule be effective immediately so that parties may know what procedures are applicable to pending cases.

**VII. 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 Sarbanes-Oxley is a new program and because of the importance to investors 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 responsibilities among the various levels of government" and therefore is not subject to Executive Order 13132 (Federalism).

**VIII. 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 Sarbanes-Oxley, 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 1800**

Administrative practice and procedure, Corporate fraud, Employment, Investigations, Reporting and recordkeeping requirements, Whistleblowing.

Signed at Washington, DC this 20th day of May, 2003.

**John L. Henshaw,**

*Assistant Secretary for Occupational Safety and Health.*

■ Accordingly, for the reasons set out in the preamble part 1800 of title 29 of the Code of Federal Regulations is added as follows:

**PART 1800—PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER SECTION 806 OF THE CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY ACT OF 2002, TITLE VIII OF THE SARBANES-OXLEY ACT OF 2002**

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

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- 1800.100 Purpose and scope.
- 1800.101 Definitions.
- 1800.102 Obligations and prohibited acts.
- 1800.103 Filing of discrimination complaint.
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- 1800.106 Objections to the findings and the preliminary order and request for a hearing.
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- 1800.108 Role of Federal agencies.
- 1800.109 Decision and orders of the administrative law judge.
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- 1800.111 Withdrawal of complaints, objections, and findings; settlement.
- 1800.112 Judicial review.
- 1800.113 Judicial enforcement.
- 1800.114 District Court jurisdiction of discrimination complaints.
- 1800.115 Special circumstances; waiver of rules.

**Authority:** 18 U.S.C. 1514A; Secretary of Labor's Order No. 5–2002, 67 FR 65008 (October 22, 2002).

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

**§ 1800.100 Purpose and scope.**

(a) This part implements procedures 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"), enacted into law July 30, 2002. Sarbanes-Oxley provides for employee protection from discrimination by companies and representatives of companies because the employee has engaged in protected activity pertaining to a violation or alleged violation of 18 U.S.C. 1341, 1343, 1344, or 1348, or any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

(b) This part establishes procedures pursuant to Sarbanes-Oxley 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 Sarbanes-Oxley, 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.

**§ 1800.101 Definitions.**

*Act* means section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, Public Law No. 107–204, July 30, 2002, codified at 18 U.S.C. 1514A.

*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.

*Company* means any company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) and any company required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)).

*Company representative* means any officer, employee, contractor, subcontractor, or agent of a company.

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

*Employee* means an individual presently or formerly working for a company or company representative, an individual applying to work for a company or company representative, or an individual whose employment could