

MEMORANDUM OF UNDERSTANDING

between

**THE FEDERAL AVIATION ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION**

and

**THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
U.S. DEPARTMENT OF LABOR**

I. PURPOSE

The purpose of this Memorandum of Understanding (MOU) is to facilitate coordination and cooperation concerning the protection of employees who provide air safety information under the provisions of Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121.

II. BACKGROUND

The Aviation Whistleblower Protection Program, 49 U.S.C. § 42121, prohibits air carriers, air carrier contractors, and air carrier subcontractors from discharging an employee or otherwise discriminating against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)--(1) provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the employer or Federal Government information relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration (FAA) or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States; (2) has 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 FAA or any other provision of Federal law relating to air carrier safety under this subtitle or 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.

FAA and the Secretary of Labor, through the Occupational Safety and Health Administration (OSHA), both have responsibilities related to 49 U.S.C. § 42121. FAA has responsibility to investigate complaints related to air carrier safety and has authority under the FAA's statute to enforce air safety regulations and issue sanctions to airmen and air carriers for noncompliance with these regulations. FAA enforcement action may include air carrier and/or airman certificate suspension and/or revocation and/or the imposition of civil penalties. Additionally, FAA may issue civil penalties for violations of 49 U.S.C. § 42121. OSHA has the responsibility to

investigate employee complaints of discrimination and may order a violator to take affirmative action to abate the violation, reinstate the complainant to his or her former position with back pay, and award compensatory damages, including attorney fees.

Although FAA and OSHA will carry out their statutory responsibilities independently, the agencies agree that administrative efficiency and sound enforcement policies will be maximized by cooperation and the timely exchange of information in areas of mutual interest.

III. PROCESS FOR COORDINATION

This MOU sets forth a process that FAA and OSHA agree to follow.

FAA and OSHA will establish a procedure for coordinating and supporting enforcement of 49 U.S.C. § 42121. OSHA agrees to promptly notify the FAA national headquarters Whistleblower Protection Program point of contact of any discrimination complaints filed with the Department of Labor (DOL) under 49 U.S.C. § 42121. OSHA will promptly provide FAA with a copy of the complaint, findings and preliminary orders, investigation reports, and orders associated with any hearing or administrative appeal related to the complaint. OSHA will also keep FAA currently informed of the status of any administrative or judicial proceeding seeking review of an order of DOL issued under 49 U.S.C. § 42121.

When an individual directly notifies FAA of alleged discrimination that involves air carrier safety, FAA will investigate the safety complaint and will provide OSHA with a copy of the individual's allegations. FAA will inform the individual that a personal remedy for discrimination is available only through DOL and that the individual should personally contact DOL. FAA will provide the individual with the local address and telephone number of the nearest OSHA office and advise the individual that the law requires that complaints be filed with OSHA within ninety (90) days of the alleged discrimination.

FAA and OSHA agree to cooperate with each other to the fullest extent possible in every case of alleged discrimination involving an employee of air carrier or air carrier contractor or subcontractor of an air carrier. Each agency agrees to share all information it obtains relating to each complaint of discrimination and will adopt mutually agreeable procedures for the protection of information that either agency deems confidential.

Each agency shall designate and maintain points of contact within its national headquarters and regional offices for purposes of implementation of this MOU and continued program oversight. A national headquarters Aviation Whistleblower Protection Program point of contact will be established and identified by each agency within ten (10) days after the effective date of this agreement. Regional office points of contact for each agency will be identified within six (6) months after the effective date of this agreement. Matters affecting program procedures and policy issues will be handled by the respective national headquarters office of each agency.

IV. IMPLEMENTATION

The FAA official responsible for implementation of this Agreement is the FAA Administrator; the DOL official responsible for implementation of this Agreement is the OSHA Assistant Secretary.

V. AMENDMENT AND TERMINATION

This Agreement may be amended or modified upon written agreement by both parties to the Agreement. The Agreement may be terminated upon ninety (90) days written notice by either party.

VI. LEGAL EFFECT

Nothing in this MOU is intended to diminish or otherwise affect the authority of either agency to implement its respective statutory functions, including the OSHA authority under the Occupational Safety and Health Act, 29 U.S.C. 651 et seq., nor is it intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person. This MOU is effective upon signature by both parties.



Jane F. Garvey
Administrator
Federal Aviation Administration
U.S Department of Transportation



John L. Henshaw
Assistant Secretary
Occupational Safety and Health Administration
U.S. Department of Labor

MAR 11 2002

Date: _____

Date: 3/22/02