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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 724

RIN 3206-AK38

Implementation of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002—Notification & Training

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to carry out the notification and training requirements of the Notification and Federal Employees Antidiscrimination and Retaliation Act of 2002 (No FEAR Act). This rule will implement the notice and training provisions of the No FEAR Act.

DATES: Effective September 18, 2006.

FOR FURTHER INFORMATION CONTACT: Gary D. Wahlert by telephone at (202) 606-2930; by FAX at (202) 606-2613; or by e-mail at NoFEAR@opm.gov.

SUPPLEMENTARY INFORMATION:

Background

The United States and its citizens are best served when the Federal workplace is free of discrimination and retaliation. In order to maintain a productive workplace that is fully engaged with the many important missions before the Government, Congress noted that it is essential that the rights of employees, former employees and applicants for Federal employment under Federal antidiscrimination and whistleblower protection laws be steadfastly protected. Congress also stated that agencies cannot be run effectively if those agencies practice or tolerate discrimination. Congress has found that notification of present and former Federal employees and applicants for

Federal employment of their rights under antidiscrimination and whistleblower protection laws, combined with training of current employees, should increase Federal agency compliance with the laws. Congress entrusted the President with the authority to promulgate rules to carry out this title, and the President, in turn, delegated to OPM the authority to issue regulations to implement the notification and training provisions of Title II of the No FEAR Act, Public Law 107-174. These regulations carry out that authority.

Introduction

On February 28, 2005, OPM published at 70 FR 9544 (2005) a proposed rule implementing the notification and training provisions of the No FEAR Act and providing a 60-day comment period. On May 26, 2005, OPM at 70 FR 30380 (2005) extended the comment period to June 28, 2005. OPM received 18 comments from Federal agencies or departments, 6 comments from union representatives, and 15 comments from others, including the No FEAR Coalition. OPM commends and thanks all who have provided comments on this important topic, and OPM has carefully considered each comment.

Comments on Definitions

The proposed regulations defined the following terms that are used in the regulations: “antidiscrimination laws,” “whistleblower protection laws,” “notice,” and “training.”

Several commenters suggested that the definition of antidiscrimination laws be expanded to cover matters under 5 U.S.C. 2302(b)(10) in order to include discrimination on the basis of sexual orientation as a form of prohibited discrimination under the No FEAR Act. Some stated that Executive Order 13087 (amending Executive Order 11478, “Equal Employment Opportunity in the Federal Government”) prohibits discrimination on the basis of sexual orientation. OPM notes that the No FEAR Act does not directly refer to 5 U.S.C. 2302(b)(10) as a law covered by the Act or refer to Executive Order 13087 (or 11478) as being covered by the Act. The regulations address those matters directly identified in the No FEAR Act. Therefore, the suggestion is not adopted.

Several commenters suggested that the definition of whistleblower protection laws be expanded to cover whistleblower protections under other laws, e.g., Clean Air Act, Safe Drinking Water Act, and others. The No FEAR Act does not directly refer to whistleblower protections other than those established by the Whistleblower Protection Act of 1989, as amended. Again, the regulations address those matters directly identified in the No FEAR Act. Thus, the suggestion is not adopted.

Comments on Notification Obligations

The proposed regulations prescribed the “time, form, and manner” of the notices to employees, former employees, and applicants as required by section 202 of the No FEAR Act. The proposal included model paragraphs for agencies to use and proposed the time frames for the notification process.

Several commenters asked that OPM clarify what is meant by “former employee” in terms of agencies’ obligation to notify former employees about their rights under Federal antidiscrimination and whistleblower protection laws. In this regard, the commenters wanted to know how long after an employee left an agency would it be until the agency’s obligation to notify him or her expires. OPM notes that the No FEAR Act makes no distinction about former employees and when they are to be notified, that is, there is no time limitation on former employees’ rights to be notified under the Act. OPM also notes, however, that the proposed rule did not require agencies to contact former employees and applicants individually but could provide notice through other means, e.g., posting a notice on agencies’ Web sites. The final rule has been revised to make this clearer by requiring that the initial notice be published in the **Federal Register** and the same notice be posted on each agency’s Web site.

Several commenters requested a clearer explanation of agency notice obligations and how they are to meet them. Some commenters requested that the regulations clarify agency responsibilities to post notices through the **Federal Register** process. One commenter suggested that OPM post a government-wide notice through this process on behalf of all agencies. OPM notes that the **Federal Register** process

was identified as an approved means to meet notification obligations under the Act in those cases where the agency does not have a Web site and the regulations have been clarified in this regard. Because the notice obligation rests with individual agencies, however, OPM declines to adopt the suggestion that OPM post a government-wide notice. At a minimum, agencies are required to include in their notices the text required by these regulations but may also add additional text in light of their individual agency circumstances. The final regulation also draws distinctions between the notice for employees and notice for former employees and applicants. Finally, one commenter asked whether a single posting on an agency's Internet Web site would meet the initial notification requirements of section 724.202(e) of the proposed rule. OPM's response is that it would not. The final rules require that all agencies' initial notices be published in the **Federal Register**. In addition, all agencies with Web sites are required to place the same notices on their sites where they are to remain until replaced or revised.

Several commenters suggested that agencies be afforded discretion and flexibility to modify the proposed model notice language to fit their needs rather than be required to use the model language verbatim. Because the notice obligation applies governmentwide, OPM believes that the required information established by these regulations should be consistent governmentwide. This would eliminate any confusion that might be created if content varied from agency to agency. Therefore, OPM does not adopt the suggestion and agencies are required to use the model language contained in the regulations. While the required information would be consistent governmentwide, OPM notes that agencies have the authority under the regulations to provide additional information within the notice. One commenter noted that the proposed section 724.202(f) would require agencies to provide a notice in alternative, accessible formats if requested by employees, former employees and applicants. The commenter was concerned that this might be read to impose requirements beyond those covered in section 508 of the Rehabilitation Act of 1973, as amended. OPM notes that section 508 is limited to electronic materials and the regulations address other materials such as (non-electronic) written notices. Therefore, OPM has not deleted the section but has modified it to state that

agencies are obligated to provide requested notices in alternative, accessible formats to the extent required by law.

Several commenters suggested that the model language describing the bases for prohibited discrimination be expanded to include sexual orientation. As noted previously in discussing the definition of antidiscrimination laws, OPM has decided not to expand the regulations beyond the express terms of the No FEAR Act; thus the suggestion is not adopted. Similar suggestions that the model language include references to types of whistleblowing other than that protected by the Whistleblower Protection Act of 1989, as amended, are not adopted because OPM has decided not to expand the regulations as previously discussed.

One commenter suggested as unnecessary the last sentence in the "Disciplinary Actions" portion of the model language that states agencies may not take unfounded disciplinary actions. OPM believes it is important to state clearly that the No FEAR Act does not change existing laws with respect to taking disciplinary actions. As the No FEAR Act states in section 102, increased accountability under the Act is not furthered "by taking unfounded disciplinary actions against managers or by violating the procedural rights of managers." Thus, OPM does not adopt the suggestion.

OPM also made a technical change to the "Disciplinary Actions" portion of the model language to clarify the circumstances in which disciplinary action may be appropriate. Accordingly, the final rule states that employees may be disciplined for conduct inconsistent with Federal antidiscrimination and whistleblower protection laws.

Several commenters requested clarification of the relationship of the No FEAR Act notification process to the Office of Special Counsel (OSC) certification program which calls for agencies to inform employees about their whistleblower protection rights. During the development of the proposed regulations, OPM consulted OSC on this issue and we agreed there is overlap between the two notification programs, with the No FEAR Act notification obligation being broader. As a result, a properly completed notice under the No FEAR Act might also meet that agency's obligations under OSC's certification program. Agencies are cautioned, however, to verify with OSC that their specific No FEAR notification process in fact does meet the requirements of the OSC's program. An agency's OSC-approved notice that includes the minimum model language in these

regulations would satisfy the notification requirements of the No Fear Act.

One commenter suggested that the proposed model language stating that "you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available" is in error. The commenter asserted that allegations of discrimination cannot be addressed by an agency's administrative grievance procedure. While OPM's former rules on administrative grievance procedures prohibited such coverage, OPM eliminated that restriction ten years ago (see 60 FR 47040, September 11, 1995), and some agencies do provide for such coverage in their administrative grievance procedure.

Comments on Training Obligations

The proposed regulations prescribed the requirements for Federal agencies to provide training under section 202 of the No FEAR Act to all their employees regarding their rights and remedies under Federal antidiscrimination and whistleblower protection laws. The proposed regulations called for agencies to develop written plans for meeting their training obligations under the Act and prescribed time limits for providing the training.

A commenter noted that some of the time frames in the regulations were expressed in "business days" while others used "calendar days" and suggested that the final rule use consistent terminology. OPM agrees that consistency within the regulations promotes better understanding and therefore adopts the suggestion. As a result, the time frames in the final regulations have been modified to use the term calendar days in all cases and the number of calendar days adjusted to reflect a comparable amount of actual time as proposed, e.g., 90 calendar days instead of 60 business days.

One commenter suggested that the word "content" be replaced in section 724.203(b) of the proposed regulations concerning training plans because the "content" of training is already set by the No FEAR Act itself, i.e., training on the rights and remedies available under the Antidiscrimination Laws and Whistleblower Protection Laws. OPM agrees and adopts the suggestion, changing "content" to "training materials" as a necessary element to be described in each agency's training plan.

In another reference to the content of agency training, a second commenter noted that section 102(5)(B) of the No FEAR Act provides that "Federal

agencies should ensure that managers have adequate training in the management of a diverse workforce and in dispute resolution and other essential communication skills." This provision is part of a number of items in the Act reflecting the "Sense of Congress"; however, this language is not repeated in the Act's section 202(c) which independently prescribes the content of agency training. Training on dispute resolution and communications skills, for example, may be beneficial, and agencies are free to include such topics in their training programs. Such topics are not, however, required under the Act and OPM declines to require such training as part of agencies' obligation to train employees on the rights and remedies available under the Antidiscrimination Laws and Whistleblower Protection Laws.

In addition to the above specific issues, a number of commenters suggested that OPM review and/or approve agency training programs, provide an oversight/enforcement mechanism on training, and receive periodic reports from agencies. Some commenters suggested that the No FEAR Coalition be a part of an OPM review process of agency training plans. OPM notes that under section 724.302(a)(9) of the proposed rule, each agency will be required to report on their written plan developed under 724.203(a) of this final rule. Copies of the agency's report will be provided to Members of Congress, the Chair of the EEOC, the Attorney General and the Director of OPM. This reporting mechanism will provide an appropriate level of oversight; therefore the suggestions are not adopted.

Several commenters suggested that the Equal Employment Opportunity Commission and the Office of Special Counsel develop training programs that agencies could use to meet their training obligations. OPM notes that the No FEAR Act did not task these agencies with that responsibility, and OPM will not do so. Agencies, however, may seek assistance and information from these agencies.

One commenter recommended that the final rule clarify that, while agencies are required to train their employees, this requirement does not extend to contract employees. OPM believes that the language is clear on its face that only current Federal employees are to be trained; thus OPM does not adopt the recommendation.

One commenter suggested that OPM require agencies to conduct face-to-face training as opposed to other types of training, e.g., computer-based training. OPM has determined that it is best left to agencies to decide the most

appropriate method(s) of training for their employees. OPM therefore declines to adopt this suggestion.

One commenter noted that the proposed regulations appeared to require agencies to incorporate No FEAR Act training into their new employee orientation programs if they have such programs. While agencies may do so (and OPM believes this may be an efficient vehicle for agencies to meet their training obligations), OPM did not intend to prevent agencies from conducting other training for new employees outside of the orientation process. OPM's intent instead is to ensure that if training is not done during a new employee orientation, it is completed within 90 calendar days after an employee enters on duty. Therefore, OPM has modified the regulation to clarify that agencies may train new employees on the rights and remedies under Federal antidiscrimination and whistleblower protection laws using new employee orientation programs or other training programs as long as the applicable training program is completed within 90 calendar days after an employee enters on duty.

Many commenters expressed concern about the proposed requirement that agencies complete initial training of their employees under the No FEAR Act by September 30, 2005. Their concerns include the logistics of training large numbers of employees in a short time, the burden on small agencies with limited resources, and the Federal budget request cycle. A number of commenters suggested that September 30, 2006, would be a more feasible date for completing initial training. One commenter suggested moving the initial training date to 2007. Other commenters, including the No FEAR Coalition, however, expressed their deep concern about the amount of time already expended in developing the regulations governing training. In balancing these concerns, OPM notes the importance Congress has attached to the training obligation, and concludes that it is imperative that agencies be allowed sufficient time to develop and deliver to employees the quality training that they deserve and to which they are entitled under the Act. Therefore, OPM has decided to require that initial training be completed within 90 days of the effective date of these regulations.

Several commenters expressed concern about the proposed rule's requirement for a two-year training cycle after the initial training is completed. Some recommended no additional training and another recommended a five-year cycle. OPM has taken into account comments on the

initial training, e.g., the logistics of training large numbers of employees, the burdens on small agencies, and the Federal budget request cycle. OPM believes, however, that on-going training is essential to maintaining a workforce that is knowledgeable about its rights and remedies under these laws. Accordingly, OPM is retaining the two-year training cycle as proposed.

Miscellaneous Comments

One commenter suggested that OPM issue regulations concerning the discipline of employees for violations of Federal antidiscrimination and whistleblower protection laws. OPM notes that section 204 of Title II of the No FEAR Act requires the President or his designee (OPM) to conduct a study of agency best practices in taking such disciplinary actions and then to develop advisory guidelines for agencies to follow in taking action. Because the No FEAR Act (through delegation by the President) already assigns this similar responsibility to OPM, the suggestion is not adopted.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

E.O. 12866, Regulatory Review

This final rule has been reviewed by the Office of Management and Budget under Executive Order 12866.

E.O. 13132

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

E.O. 12988, Civil Justice Reform

This regulation meets the applicable standard set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were

deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to agency management, personnel and organization and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 5 CFR Part 724

Administrative practice and procedure, Civil rights, Claims.

U.S. Office of Personnel Management.

Linda M. Springer,
Director.

■ Accordingly, OPM amends part 724 of title 5, Code of Federal Regulations, as follows:

PART 724—IMPLEMENTATION OF TITLE II OF THE NOTIFICATION AND FEDERAL EMPLOYEE ANTIDISCRIMINATION AND RETALIATION ACT OF 2002

■ 1. The authority citation for part 724 continues to read as follows:

Authority: Sec. 204 of Public Law 107–174; Presidential Memorandum dated July 8, 2003, "Delegation of Authority Under Section 204(a) of the Notification and Federal Employee Antidiscrimination Act of 2002."

Subpart A—Reimbursement of Judgment Fund

■ 2. In § 724.102 of subpart A, add new definitions for *Antidiscrimination Laws*, *Notice*, *Training*, and *Whistleblower Protection Laws* in alphabetical order to read as follows:

§ 724.102 Definitions.

* * * * *

Antidiscrimination Laws refers to 5 U.S.C. 2302(b)(1), 5 U.S.C. 2302(b)(9) as applied to conduct described in 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e–16.

* * * * *

Notice means the written information provided by Federal agencies about the rights and protections available under Federal Antidiscrimination Laws and Whistleblower Protection Laws.

* * * * *

Training means the process by which Federal agencies instruct their employees regarding the rights and

remedies applicable to such employees under the Federal Antidiscrimination Laws and Whistleblower Protection Laws.

Whistleblower Protection Laws refers to 5 U.S.C. 2302(b)(8) or 5 U.S.C. 2302(b)(9) as applied to conduct described in 5 U.S.C. 2302(b)(8).

■ 3. A new subpart B to Part 724 is added to read as follows:

Subpart B—Notification of Rights and Protections and Training

Sec.

724.201 Purpose and scope.

724.202 Notice obligations.

724.203 Training obligations.

§ 724.201 Purpose and scope.

(a) This subpart implements Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 concerning the obligation of Federal agencies to notify all employees, former employees, and applicants for Federal employment of the rights and protections available to them under the Federal Antidiscrimination Laws and Whistleblower Protection Laws. This subpart also implements Title II concerning the obligation of agencies to train their employees on such rights and remedies. The regulations describe agency obligations and the procedures for written notification and training.

(b) Pursuant to section 205 of the No FEAR Act, neither that Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

§ 724.202 Notice obligations.

(a) Each agency must provide notice to all of its employees, former employees, and applicants for Federal employment about the rights and remedies available under the Antidiscrimination Laws and Whistleblower Protection Laws applicable to them.

(b) The notice under this part must be titled, "No FEAR Act Notice."

(c) Each agency must provide initial notice within 60 calendar days after September 18, 2006. Thereafter, the notice must be provided by the end of each successive fiscal year and any posted materials must remain in place until replaced or revised.

(d) After the initial notice, each agency must provide the notice to new employees within 90 calendar days of entering on duty.

(e) Each agency must provide the notice to its employees in paper (e.g., letter, poster or brochure) and/or

electronic form (e.g., e-mail, internal agency electronic site, or Internet Web site). Each agency must publish the *initial* notice in the **Federal Register**. Agencies with Internet Web sites must also post the notice on those Web sites, in compliance with section 508 of the Rehabilitation Act of 1973, as amended. For agencies with components that operate Internet Web sites, the notice must be made available by hyperlinks from the Internet Web sites of both the component and the parent agency. An agency may meet its paper and electronic notice obligation to former employees and applicants by publishing the initial notice in the **Federal Register** and posting the notice on its Internet Web site if it has one.

(f) To the extent required by law and upon request by employees, former employees and applicants, each agency must provide the notice in alternative, accessible formats.

(g) Unless an agency is exempt from the cited statutory provisions, the following is the minimum text to be included in the notice. Each agency may incorporate additional information within the model paragraphs, as appropriate.

Model Paragraphs

No Fear Act Notice

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," which is now known as the No FEAR Act. One purpose of the Act is to "require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws." Public Law 107–174, Summary. In support of this purpose, Congress found that "agencies cannot be run effectively if those agencies practice or tolerate discrimination." Public Law 107–174, Title I, General Provisions, section 101(1).

The Act also requires this agency to provide this notice to Federal employees, former Federal employees and applicants for Federal employment to inform you of the rights and protections available to you under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e–16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an

Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. See, e.g. 29 CFR 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC-11) with the U.S. Office of Special Counsel at 1730 M Street NW., Suite 218, Washington, DC 20036-4505 or online through the OSC Web site—<http://www.osc.gov>.

Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for conduct

that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate offices within your agency (e.g., EEO/civil rights office, human resources office or legal office). Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site—<http://www.eeoc.gov> and the OSC Web site—<http://www.osc.gov>.

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

§ 724.203 Training obligations.

(a) Each agency must develop a written plan to train all of its employees (including supervisors and managers) about the rights and remedies available under the Antidiscrimination Laws and Whistleblower Protection Laws applicable to them.

(b) Each agency shall have the discretion to develop the instructional materials and method of its training plan. Each agency training plan shall describe:

- (1) The instructional materials and method of the training,
- (2) The training schedule, and
- (3) The means of documenting completion of training.

(c) Each agency may contact EEOC and/or OSC for information and/or assistance regarding the agency's training program. Neither agency, however, shall have authority under this regulation to review or approve an agency's training plan.

(d) Each agency is *encouraged* to implement its training as soon as possible, but *required* to complete the initial training under this subpart for all employees (including supervisors and managers) by December 17, 2006. Thereafter, each agency must train all employees on a training cycle of no longer than every 2 years.

(e) After the initial training is completed, each agency must train new

employees as part of its agency orientation program or other training program. Any agency that does not use a new employee orientation program for this purpose must train new employees within 90 calendar days of the new employees' appointment.

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BILLING CODE 6325-39-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE194, Special Condition 23-134A-SC]

Special Conditions; Cirrus Design Corporation SR22; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Amended final special conditions; request for comments.

SUMMARY: These amended special conditions are issued to Cirrus Design Corporation, 4515 Taylor Circle, Duluth, Minnesota 55811, for a Type Design Change. This special condition amends special condition 23-134-SC, which was published February 4, 2003 (68FR 5538), for installation of an Electronic Flight Instrument System (EFIS) manufactured by Avidyne Corporation on the SR22. This amendment covers additional electronic equipment, such as a digital autopilot and/or engine related systems designed to perform critical functions on the SR22 and other models listed on the same Type Data Sheet, A00009CH.

The airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. The applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is July 11, 2006.

Comments must be received on or before August 21, 2006.

ADDRESSES: Comments on these special conditions may be mailed in duplicate