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GENERAL ACCOUNTING OFFICE

4 CFR Part 81

Public Availability of General Accounting Office Records

AGENCY: General Accounting Office.

ACTION: Final rule.

SUMMARY: This rule amends General Accounting Office (GAO) regulations regarding the public availability and disclosure of GAO records. The amendments are necessary in order for the GAO to voluntarily adopt certain procedural principles of the Electronic Freedom of Information Act Amendments of 1996. Specifically, the amendments make it clear that the public may request and obtain electronic records under the regulations. Further, they inform the public that GAO published documents may easily be obtained from GAO's Internet Web site. Other minor changes and "housekeeping" amendments are made to clarify current policy and to correct titles, addresses, telephone numbers, and the hours of operation of the GAO public reading facility, which is located in the Law Library at the GAO Building. The overall effect of the amendments is for GAO to generally take less time in processing information requests.

DATES: Effective on June 6, 2003.

FOR FURTHER INFORMATION CONTACT: Jeffrey Forman (Assistant General Counsel), 202-512-9763 or 617-788-0546; e-mail: formanj@gao.gov.

SUPPLEMENTARY INFORMATION: Over thirty years ago, Congress established a policy of openness toward public disclosure of government information by enacting the Freedom of Information Act (FOIA) (5 U.S.C. 522). Under FOIA, any member of the public may request access to information within control of a federal executive branch agency. GAO is a legislative agency and is, therefore, not subject to the FOIA. Nevertheless,

GAO has voluntarily adopted an information disclosure policy that includes many of the procedural principles contained in FOIA. GAO also is not subject to the Electronic Freedom of Information Act Amendments of 1996 (E-FOIA), Public Law 104-231, which amended FOIA to provide greater public access to information maintained in an electronic format. This final rule amends GAO regulations addressing the public availability of GAO records by adopting practices similar to E-FOIA procedures.

GAO adopts only certain procedural features of the FOIA and E-FOIA, as opposed to adopting substantive law. Application of the FOIA and the E-FOIA to the GAO is not to be inferred (4 CFR 81.1). This rule is published as a final rule without notice or an opportunity for comment. The Administrative Procedures Act (APA), 5 U.S.C. 551 *et seq.*, does not apply to GAO. GAO voluntarily follows key principles set forth in the APA, like it voluntarily follows many of the procedural principles set forth in FOIA. Since this rule is procedural in nature, rather than substantive, it is consistent with the principles of the APA for GAO to issue it as a final rule without providing notice and an opportunity for public comment. This has been GAO's past practice as GAO has amended part 81 on previous occasions without soliciting public comment. (See for example 53 FR 50913 (Dec. 19, 1988), 49 FR 38527 (Oct. 1, 1984), and 46 FR 47053 (Sept. 24, 1981).)

Other changes to GAO's records disclosure regulations are made to reflect current GAO policy, practices, and procedures, including but not limited to organizational changes, which resulted in new titles, addresses, telephone numbers, and hours of operation that relate to GAO processing requests for GAO records and documents.

In accordance with the spirit of E-FOIA, a new provision is added to section 81.1 informing the public that GAO publications (testimonies, reports, decisions, and listings of publications) are now expressly included within the scope of the regulations to the extent that the public may readily obtain copies of them from the GAO Web site, <http://www.gao.gov> or from the U.S. General Accounting Office, 441 G Street NW., Room LM, Washington, DC 20548.

The address for writing and the telephone numbers for calling GAO to obtain copies of GAO published documents are moved from section 81.2 to section 81.1 for consistency to have all pertinent information for obtaining published documents provided in the same section.

Section 81.2 is updated by correcting the title of the GAO official who has the authority and responsibility for administering the GAO records disclosure program, including issuing necessary supplemental rules and regulations. Paragraph (b) of section 81.3 revises the definition of the term "records" to expressly include electronically created or maintained materials. The language is amended to state in plain language that only existing records and records under GAO control are covered.

Recognizing that some requests may have more urgency than others, paragraph (f) is added to § 81.3 to provide a definition of "compelling need" for purposes of determining whether to honor requests for expedited processing. Section 81.4 revisions provide requesters with the correct name and address for sending to GAO requests for documents that have not been published. The GAO Internet home page address is also provided so requesters may submit their requests electronically.

Under § 81.4 as it is amended, GAO will respond to a requester by acknowledging or honoring the request within 20 days of receipt. In light of this procedure, the requirement that GAO promptly honor requests when no valid objection exists for withholding the records is no longer necessary and is therefore eliminated. Expedited requests where a requester provides GAO with a certified statement demonstrating a compelling need will be processed before other requests. A 60-day time limit for requesting an administrative appeal of a denial of a request is established. Section 81.5, concerning records originating outside GAO and records involving work in progress, is not changed.

Revisions to section 81.6 clarify and set out in greater detail current GAO policy and practice regarding records exempt from disclosure. In this regard, paragraph (l) is divided into two paragraphs, (l) and (m). Other revisions to section 81.6 reflect changes to

organizational structure by correcting the title of the GAO official with discretion to release exempt records from the Director of Policy to the Chief Quality Officer. The GAO fee schedule set out in section 81.7 is updated to reflect current costs associated with processing requests. Other revisions inform requesters of the recent change in the title of the official responsible for deciding whether a fee should be waived or reduced. Changes to section 81.8 delineate that the GAO's public reading facility is maintained in the GAO Law Library, and its location and hours of operation. The hours of operation for public use of the Law Library are changed to 8:30 a.m. to 4 p.m. GAO's public reading facility was previously open to the public from 8:30 a.m. to 5 p.m. It continues to be closed on Saturdays, Sundays, and holidays.

List of Subjects in 4 CFR Part 81

Administrative practice and procedure, Archives and records, Computer technology, Electronic products, Freedom of information.

■ For the reasons set forth in the preamble, GAO amends Title 4, Chapter I, Subchapter F of the Code of Federal Regulations by revising part 81 to read as follows:

PART 81—PUBLIC AVAILABILITY OF GENERAL ACCOUNTING OFFICE RECORDS

Sec.

- 81.1 Purpose and scope of part.
- 81.2 Administration.
- 81.3 Definitions.
- 81.4 Requests for identifiable records.
- 81.5 Records originating outside GAO, or records involving work in progress.
- 81.6 Records which may be exempt from disclosure.
- 81.7 Fees and charges.
- 81.8 Public reading facility.

Authority: 31 U.S.C. 711.

§ 81.1 Purpose and scope of part.

(a) This part implements the policy of the U.S. General Accounting Office (GAO) with respect to the public availability of GAO records. While GAO is not subject to the Freedom of Information Act (5 U.S.C. 552), GAO's disclosure policy follows the spirit of the act consistent with its duties and functions and responsibility to the Congress. Application of this act to GAO is not to be inferred from the provisions of these regulations.

(b) GAO published testimonies, reports, and decisions or listings of publications are included within the scope of this part to the extent that they may be obtained from the GAO Web site, <http://www.gao.gov>, or from the

U.S. General Accounting Office, 441 G Street NW., Room LM, Washington, DC 20548, or phone 202-512-6000, FAX 202-512-6061, TDD 202-512-2537. [Please note that this address is for published GAO documents only, other records requests should be sent to the address provided in section 81.4(a).]

§ 81.2 Administration.

The Chief Quality Officer administers this part and may promulgate such supplemental rules or regulations as may be necessary.

§ 81.3 Definitions.

As used in this part:

(a) *Identifiable* means a reasonably specific description of a particular record sought, such as the date of the record, subject matter, agency or person involved, etc., which will permit location or retrieval of the record.

(b) *Records* includes all books, papers, manuals, maps, photographs, reports, and other documentary materials, regardless of physical form or characteristics, including electronically created or maintained materials, under the control of GAO in pursuance of law or in connection with the transaction of public business. As used in this part, the term "records" is limited to an existing record under GAO's control and does not include compiling or procuring records, library or museum material made, acquired, or preserved solely for reference or exhibition purposes, or extra copies of documents preserved only for convenience of reference.

(c) *Records available to the public* means records which may be examined or copied or of which copies may be obtained, in accordance with this part, by the public or representatives of the press regardless of interest and without specific justification.

(d) *Disclose or disclosure* means making available for examination or copying, or furnishing a copy.

(e) *Person* includes an individual, partnership, corporation, association, or public or private organization other than a Federal agency.

(f) *Compelling need* means that a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or the records are needed urgently, with respect to a request made by a person primarily engaged in disseminating information, for the requester to inform the public concerning actual or alleged Federal Government activity.

§ 81.4 Requests for identifiable records.

(a) A request to inspect or obtain a copy of an identifiable record of GAO

must be submitted in writing to the Chief Quality Officer, U.S. General Accounting Office, 441 G Street, NW., Washington, DC 20548. Requests may also be made via a link from GAO's Internet Home page at <http://www.gao.gov>. Requests also may be emailed to recordsrequest@gao.gov. The Chief Quality Officer will either acknowledge or honor the request within 20 days of receipt.

(b) The Chief Quality Officer will honor requests for expedited processing before all other requests in cases in which the person requesting the records demonstrates a compelling need. A demonstration of compelling need shall be made by a statement certified by the requester to be true and correct to the best of the requester's knowledge and belief.

(c) In the event of an objection or doubt as to the propriety of providing the requester with a copy of the record sought, every effort will be made to resolve such problems as quickly as possible, including consultation with appropriate GAO elements. If it is determined that the record should be withheld, the Chief Quality Officer shall inform the requester in writing that the request has been denied, shall identify the material withheld, and shall explain the basis for the denial.

(d) A person whose request is denied in whole or part may administratively appeal the denial within 60 days after the date of the denial by submitting a letter to the Comptroller General of the United States at the address listed in paragraph (a) of this section, explaining why the denial of the request was unwarranted.

§ 81.5 Records originating outside GAO, or records involving work in progress.

(a) It is the policy of GAO not to provide records from its files that originate in another agency or nonfederal organization to persons who may not be entitled to obtain the records from the originator. In such instances, requesters will be referred to the person or organization that originated the records.

(b) In order to avoid disruption of work in progress, and in the interests of fairness to those who might be adversely affected by the release of information which has not been fully reviewed to assure its accuracy and completeness, it is the policy of GAO not to provide records which are part of ongoing reviews or other current projects. In response to such requests, GAO will inform the requester of the estimated completion date of the review or project so that the requester may then ask for the records. At that time, the records

may be released unless exempt from disclosure under § 81.6.

§ 81.6 Records which may be exempt from disclosure.

The public disclosure of GAO records contemplated by this part does not apply to records, or parts thereof, within any of the categories listed below.

Unless precluded by law, the Chief Quality Officer may nevertheless release records within these categories.

(a) Congressional correspondence and other records relating to work performed in response to a congressional request (unless authorized by the congressional requester), and congressional contact memoranda.

(b) Records specifically required by an Executive Order to be kept secret in the interest of national defense or foreign policy. An example of this category is a record classified under Executive Order 12958, Classified National Security Information.

(c) Records related solely to the internal personnel rules and practices of an agency. This category includes, in addition to internal matters of personnel administration, internal rules and practices which cannot be disclosed without prejudice to the effective performance of an agency function. Examples within the purview of this exemption are guidelines and procedures for auditors, investigators, or examiners, and records concerning an agency's security practices or procedures.

(d) Records specifically exempted from disclosure by statute provided that such statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(e) Records containing trade secrets and commercial or financial information obtained from a person that are privileged or confidential. This exemption may include, but is not limited to, business sales statistics, inventories, customer lists, scientific or manufacturing processes or development information.

(f) Personnel and medical files and similar files the disclosure of which could constitute a clearly unwarranted invasion of personal privacy. This exemption excludes from disclosure all personnel and medical files, and all private or personal information contained in other files, which, if disclosed to the public, would amount to a clearly unwarranted invasion of the privacy of any person. An example of

such other files within the exemption would be files compiled to evaluate candidates for security clearance.

(g) Records and information compiled for law enforcement purposes.

(h) Records having information contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

(i) Records containing geological and geophysical information and data (including maps) concerning wells.

(j) Inter-agency or intra-agency memoranda, letters, or other materials that are part of the deliberative process. For example, this exemption includes internal communications such as GAO or other agency draft reports, and those portions of internal drafts, memoranda and workpapers containing opinions, recommendations, advice, or evaluative remarks of GAO employees. This exemption seeks to avoid the inhibiting of internal communications, and the premature disclosure of documents which would be detrimental to an agency decision making.

(k) Records in addition to those described in paragraph (j) of this section containing information customarily subject to protection as privileged in a court or other proceedings, such as information protected by the doctor-patient, attorney-work product, or lawyer-client privilege.

(l) Records GAO has obligated itself not to disclose, including but not limited to, records for which GAO officials have made a pledge of confidentiality, and records the release of which would adversely impact significant property interests or negatively affect public safety.

(m) Unsolicited records containing information submitted by any person to GAO in confidence. An example of records covered by this exemption would be information obtained by the GAO Office of General Counsel (GAO FraudNET).

§ 81.7 Fees and charges.

(a) No fee or charge will be made for:

(1) Records provided under this part when the direct costs involve less than one hour of search time and 50 pages of photocopying.

(2) Staff-hours spent in resolving any legal or policy questions pertaining to the request.

(3) Copies of records, including those certified as true copies, furnished for official use to a federal government officer or employee.

(4) Copies of pertinent records furnished to a party having a direct and immediate interest in a matter pending

before GAO, when necessary or desirable to the performance of a GAO function.

(b) The fees and charges described below will be assessed for the direct costs of search, review, and reproduction of records available to the public under this part.

(1) The cost for reproduction per page shall be 20 cents.

(2) The cost for a certification of authenticity shall be \$10 for each certificate.

(3) Manual search and review for records by office personnel will be assessed at \$12, \$25, or \$45 per hour, depending on the rate of pay of the individual actually conducting the search or review, and the complexity of the search.

(4) Other direct costs related to the request may be charged for such items as computer searches.

(5) Except as noted immediately below, requesters generally will be charged only for document duplication. However, there may be times when a search charge will be added, for example, if records are not described with enough specificity to enable them to be located within one hour. Requesters seeking records for commercial use will be charged for document duplication, search, and review costs. Additionally, representatives of the news media, in support of a news gathering or dissemination function, and education or noncommercial scientific institutions not seeking records for commercial use will be charged only for document duplication, unless such request requires extraordinary search or review.

(c) GAO shall notify the requester if an advance deposit is required.

(d) Fees and charges shall be paid by check or money order payable to the U.S. General Accounting Office.

(e) The Chief Quality Officer may waive or reduce the fees under this section upon a determination that disclosure of the records requested is in the public interest, is likely to contribute significantly to public understanding of the operations or activities of the government, and is not primarily in the commercial interest of the requester. Persons seeking a waiver or fee reduction may be required to submit a statement setting forth the intended purpose for which the records are requested, indicate how disclosure will primarily benefit the public and, in appropriate cases, explain why the volume of records requested is necessary. Determinations pursuant to this paragraph are solely within the discretion of GAO.

§ 81.8 Public reading facility.

GAO maintains a public reading facility in the Law Library at the General Accounting Office Building, 441 G Street, NW., Washington, DC. The facility shall be open to the public from 8:30 a.m. to 4 p.m. except Saturday, Sundays, and holidays.

Anthony H. Gamboa,

General Counsel, General Accounting Office.

[FR Doc. 03-14304 Filed 6-5-03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 25**

[Docket No. NM256, Special Conditions No. 25-236-SC]

Special Conditions: Raytheon Model HS.125 Series 700A and 700B Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Raytheon Model HS.125 Series 700A and 700B airplanes modified by Raytheon Aircraft Services, Inc. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of a Rockwell Collins AFD 2000 Electronic Flight Instrument System (EFIS) that performs critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of this system 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 that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is May 22, 2003. Comments must be received on or before July 7, 2003.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM 113), Docket No. NM256, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; or

delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM256.

FOR FURTHER INFORMATION CONTACT: Connie Beane, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone (425) 227-2796; facsimile (425) 227-1149.

SUPPLEMENTARY INFORMATION:**Comments Invited**

The FAA has determined that notice and opportunity for public comment in accordance with 14 CFR 11.38 are unnecessary, because the FAA has provided previous opportunities to comment on substantially identical special conditions and has fully considered and addressed all the substantive comments received. Based on a review of the comment history and the comment resolution, the FAA is satisfied that new comments are unlikely. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

However, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m., and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we received.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On September 23, 2002, Raytheon Aircraft Services, Inc., 1115 Paul Wilkins Road, San Antonio, Texas 78216, applied for a supplemental type certificate (STC) to modify Raytheon Model HS.125 Series 700A and 700B airplanes. These models are currently approved under Type Certificate No. A3EU. The HS.125 Series 700A and 700B airplanes are two flightcrew, two-engine airplanes, each with a maximum takeoff weight of 25,500 lbs. The modification incorporates the installation of a Rockwell Collins AFD 2000 EFIS. This equipment will replace the equipment originally installed in these airplanes which presents the required flight information in the form of analog displays. The avionics/electronics and electrical system to be installed has the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Amendment 21-69, effective September 16, 1991, Raytheon Aircraft Services, Inc. must show that the modified Model HS.125 Series 700A and 700B airplanes, as modified, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A3EU, or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to § 21.101 as part of Amendment 21-77, but those changes do not become effective until June 10, 2003. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Model HS.125 Series 700A and 700B airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Raytheon Model HS.125 Series 700A and 700B airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2), Amendment 21-69, effective September 16, 1991.