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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:

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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