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GOVERNMENT ACCOUNTABILITY OFFICE

4 CFR Part 81

Public Availability of Government Accountability Office Records

AGENCY: Government Accountability Office.

ACTION: Final rule.

SUMMARY: This rule is a revision of portions of GAO’s records rule. These revisions clarify procedures to obtain Government Accountability Office (GAO) documents. Published GAO documents such as testimonies, reports, and decisions are available to the public on GAO’s Web site and also may be requested over the telephone. Their wide availability eliminates the need for regulations governing their request, and accordingly published GAO documents are no longer subject to the procedures of this part. The revisions also clarify that records compiled for law enforcement purposes by another agency and records provided by GAO to another agency for law enforcement purposes are not subject to disclosure. The previous regulatory language on this point was imprecise. The changes also add steps to the procedures for using GAO’s public reading facility, to facilitate the efficient use of the facility. Finally, the revisions make various housekeeping changes reflecting shifts in GAO’s operating procedures.

These changes clarify for the public which GAO documents are subject to this part and how to obtain such documents.

DATES: Effective March 8, 2011.

FOR FURTHER INFORMATION CONTACT: John A. Bielec, Assistant General Counsel, 202–512–2846.

SUPPLEMENTARY INFORMATION: Part 81 of Title 4 of the Code of Federal Regulations contains the procedures for members of the public to obtain GAO documents.

GAO is amending paragraph (b) of § 81.1 to remove all published GAO documents, such as reports and decisions, from this part’s purview. All such documents are publicly available on GAO’s Web site, http://www.gao.gov, and may also be ordered over the telephone. Accordingly, regulations governing requests for public disclosure of such documents are unnecessary. It is also well established that when an agency makes its documents widely available to the public, the agency need not reproduce those documents again in response to a Freedom of Information Act (FOIA) request. Department of Justice v. Tax Analysts, 492 U.S. 136, 152 (1989). While GAO is not subject to FOIA, the principle applies equally in this context.

Published GAO documents may be downloaded free of charge from GAO’s Web site. Print copies may be ordered by telephone, but GAO charges a fee to print and ship documents requested this way, as provided in § 81.7, which is unchanged by this rule. Under this revised rule, GAO will no longer accept requests via fax or mail for published documents. Requests for GAO documents not available on GAO’s Web site remain subject to this part and must be submitted in writing to GAO, via either mail or e-mail, in accordance with § 81.4. Technical amendments to paragraphs (a) and (c) of § 81.1 are made as needed to conform with these changes.

Paragraph 81.6(g) is amended to clarify the types of documents GAO considers to be compiled for law enforcement purposes. Such documents are not subject to disclosure under this part.

Although GAO is not a law enforcement agency, it occasionally collects, during the course of its audits and investigations, records from law enforcement agencies that those agencies compiled for their own law enforcement purposes. While GAO did not compile the records, they are nonetheless exempt from disclosure because they were originally compiled for law enforcement purposes and may still be used for such purposes by the originating agency. Disclosure of such records would undermine the originating agency’s law enforcement mission.

During the course of its work, GAO also occasionally receives information from non-law enforcement sources that indicates possible civil or criminal wrongdoing by another party. GAO forwards such information to other Federal, State, or local agencies with enforcement jurisdiction over the matter. The receiving agencies may use the information for their own investigations, prosecutions, or other law enforcement matters. GAO considers such information to be compiled for law enforcement purposes if, at the time GAO receives a request under this part for the information, the receiving agency advises GAO that the information is being, or will be, used by that agency for a law enforcement purpose. In these circumstances, GAO’s disclosure of the information could undermine law enforcement operations. “Law enforcement” in this context includes civil and administrative as well as criminal matters.

This policy is consistent with the United States Supreme Court’s ruling that information not originally compiled for law enforcement purposes is nevertheless exempt from public disclosure if, at the time of a request, it is being used for law enforcement purposes. John Doe Agency v. John Doe Corp., 493 U.S. 146, 153–55 (1989).

Section 81.8 is amended to advise individuals who wish to use GAO’s public reading facility to schedule an appointment and to have GAO’s staff determine whether the records sought are included in the public reading facility collection.

Section 81.2 is amended to clarify and identify the entity within GAO that administers this part. Section 81.4 is amended to delete language that GAO records may be requested via a link on GAO’s Web site. GAO will continue to accept requests for GAO records by e-mail. Paragraph (m) of § 81.6 is amended to correctly identify the entity within GAO that operates GAO FraudNet.

GAO submitted for comment a proposed rule containing these amendments, which was published in the Federal Register on November 24, 2010 (75 FR 71567). GAO received no comments on the proposed rule.

GAO is not subject to the Administrative Procedure Act.
PART 81—PUBLIC AVAILABILITY OF GOVERNMENT ACCOUNTABILITY OFFICE RECORDS

1. The authority citation for part 81 continues to read as follows:


2. Amend §81.1 to revise the first sentence of paragraph (a), to revise paragraph (b), and to add paragraph (c) to read as follows:

§ 81.1 Purpose and scope of part.
(a) This part implements the policy of the U.S. Government Accountability Office (GAO) with respect to the public availability of GAO records, except as set forth in paragraph (b) of this section.

(b) GAO published testimonies, reports, decisions, special publications, or listings of publications are not included within the scope of this part. These documents may be obtained from the GAO Web site, http://www.gao.gov, or by telephone at 202–512–6000, TDD 202–512–2537, or 1–866–801–7077 (toll free). These publications may be downloaded free of charge from the GAO Web site. Paper copies requested from GAO are subject to a printing, shipping, and handling fee.

(c) Requests for all other GAO records are within the scope of this part and should be submitted to GAO as directed in paragraph (a) of §81.4.

3. Revise §81.2 to read as follows:

§ 81.2 Administration.

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

4. In §81.4, remove the second sentence of paragraph (a).

5. Amend §81.6 to revise paragraph (g) and the sentence following the italic heading in paragraph (m) to read as follows:

§ 81.6 Records which may be exempt from disclosure.

(a) * * * * * * *

(g) Records compiled for law enforcement purposes that originate in another agency, or records provided by GAO to another agency for law enforcement purposes.

GAO

§ 81.8 Public reading facility.

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