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§ 1220.60 Follow-up notification and reviews.

(a) If NARA determines that there is not substantial progress in the full implementation of evaluation recommendations or that the agency has not corrected serious problems identified in the report, the Archivist, after notifying the head of the agency, may notify Congress and appropriate Federal oversight agencies of the evaluation findings and the agency response.

(b) NARA may initiate follow-up reviews at specific offices or field sites. Results of these follow-up reviews shall be communicated to the head of the agency and, if NARA determines it to be appropriate, to Congress and Federal oversight agencies.

PART 1222—CREATION AND MAINTENANCE OF FEDERAL RECORDS

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AUTHORITY: 44 U.S.C. 2904, 3101, and 3102.

SOURCE: 55 FR 27423, July 2, 1990, unless otherwise noted.

Subpart A—General

§ 1222.10 Authority.

(a) 44 U.S.C. 2904, vests in the Archivist of the United States responsibility for providing guidance and assistance to Federal agencies with respect to ensuring adequate and proper documentation of the policies and transactions of the Federal Government, including developing and issuing standards to improve the management of records.

(b) 44 U.S.C. 3101, requires that the head of each Federal agency shall make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities.

(c) 44 U.S.C. 3102, requires that the head of each Federal agency shall establish and maintain an active, continuing program for the economical and efficient management of the records of the agency. The program, among other things, shall provide for—

(1) Effective controls over the creation, and over the maintenance and use of records in the conduct of current business;

(2) Cooperation with the Administrator of General Services and the Archivist in applying standards, procedures, and techniques designed to improve the management of records, promote the maintenance and security of records deemed appropriate for preservation, and facilitate the segregation and disposal of records of temporary value.

§ 1222.12 Defining Federal records.

(a) The statutory definition of Federal records is contained in 44 U.S.C. 3301 and is stated in § 1220.14 of this chapter.

(b) Several key terms, phrases, and concepts in the statutory definition of records are defined as follows:

(1) *Documentary materials* is a collective term for records, nonrecord materials, and personal papers that refers to all media containing recorded information, regardless of the nature of the media or the method(s) or circumstance(s) of recording.

(2) *Regardless of physical form or characteristics* means that the medium may be paper, film, disk, or other physical

type or form; and that the method of recording may be manual, mechanical, photographic, electronic, or any other combination of these or other technologies.

(3) *Made* means the act of creating and recording information by agency personnel in the course of their official duties, regardless of the method(s) or the medium involved. The act of recording is generally identifiable by the circulation of the information to others or by placing it in files accessible to others.

(4) *Received* means the acceptance or collection of documentary materials by agency personnel in the course of their official duties regardless of their origin (for example, other units of their agency, private citizens, public officials, other agencies, contractors, Government grantees) and regardless of how transmitted (in person or by messenger, mail, electronic means, or by any other method). In this context, the term does not refer to misdirected materials. It may or may not refer to loaned or seized materials depending on the conditions under which such materials came into agency custody or were used by the agency. Advice of legal counsel should be sought regarding the ''record'' status of loaned or seized materials.

(5) *Preserved* means the filing, storing, or any other method of systematically maintaining documentary materials by the agency. This term covers materials not only actually filed or otherwise systematically maintained but also those temporarily removed from existing filing systems.

(6) *Appropriate for preservation* means documentary materials made or received which in the judgment of the agency should be filed, stored, or otherwise systematically maintained by an agency because of the evidence of agency activities or information they contain, even though the materials may not be covered by its current filing or maintenance procedures.

[55 FR 27423, July 2, 1990; 55 FR 31982, Aug. 6, 1990]

Subpart B—Program Requirements

§ 1222.20 Agency responsibilities.

(a) The head of each Federal agency, in meeting the requirements of 44 U.S.C. 2904, 3101, and 3102, shall observe the responsibilities and standards set forth in this part. Agencies are also subject to regulations issued by the General Services Administration (GSA) in 41 CFR part 102–193.

(b) Each Federal agency shall:

(1) Assign to one or more offices of the agency the responsibility for the development and implementation of agency-wide programs to identify, develop, issue, and periodically review recordkeeping requirements for records for all agency activities at all levels and locations in all media including paper, microform, audiovisual, cartographic, and electronic (including those created or received using electronic mail);

(2) Integrate programs for the identification, development, issuance, and periodic review of recordkeeping requirements with other records and information resources management programs of the agency, including the requirement of close coordination between the office designated in 36 CFR 1222.20(b)(1) and the office assigned overall records management responsibility in accordance with 36 CFR 1220.40, if the two are different;

(3) Issue a directive(s) establishing program objectives, responsibilities, and authorities for agency recordkeeping requirements. Copies of the directive(s) (including subsequent amendments or supplements) shall be disseminated throughout the agency, as appropriate, and a copy shall be sent to NARA (NWML);

(4) Establish procedures for the participation of records management officials in developing new or revised agency programs, processes, systems, and procedures in order to ensure that adequate recordkeeping requirements are established and implemented;

(5) Ensure that adequate training is provided to all agency personnel on policies, responsibilities, and techniques for the implementation of recordkeeping requirements and the distinction between records and nonrecord

materials, regardless of media, including those materials created by individuals using computers to send or receive electronic mail;

(6) Develop and implement records schedules for all records created and received by the agency and obtain NARA approval of the schedules in accordance with 36 CFR part 1228;

(7) Ensure compliance with applicable Governmentwide policies, procedures, and standards relating to recordkeeping requirements as may be issued by the Office of Management and Budget, the General Services Administration, the National Archives and Records Administration, the National Institute of Standards and Technology, or other agencies, as appropriate;

(8) Review recordkeeping requirements, as part of the periodic information resources management reviews required by 44 U.S.C. 3506, or the periodic records management evaluations required by 36 CFR 1220.54, in order to validate their currency and to ensure that recordkeeping requirements are being implemented;

(9) Remind all employees annually of the agency's recordkeeping policies and of the sanctions provided for the unlawful removal or destruction of Federal records (18 U.S.C. 2071);

(10) Ensure that records storage facilities used to store the agency's records comply with the standards specified in 36 CFR part 1228, subpart K. The agency must also comply with 36 CFR 1228.240 by obtaining NARA approval of an agency records center or submitting documentation of compliance by a commercial records storage facility before the agency transfers records to that facility.

[55 FR 27423, July 2, 1990, as amended at 58 FR 49194, Sept. 22, 1993; 60 FR 44640, Aug. 28, 1995; 63 FR 35829, July 1, 1998; 64 FR 67664, Dec. 2, 1999; 67 FR 31962, May 13, 2002]

Subpart C—Standards for Agency Recordkeeping Requirements

§ 1222.30 Purpose.

(a) The clear articulation of recordkeeping requirements by Federal agencies is essential if agencies are to meet the requirements of 44 U.S.C. 3101 and 3102 with respect to creating, receiving, maintaining, and preserving adequate and proper documentation, and with respect to maintaining an active, continuing program for the economical and efficient management of agency records.

(b) Although many agencies regularly issue recordkeeping requirements for routine operations, many do not adequately specify such requirements for documenting policies and decisions, nor do they provide sufficient guidance on distinguishing between records and nonrecord materials, and maintaining records created or received on electronic mail systems.

(c) Since agency functions, activities, and administrative practices vary so widely, NARA cannot issue a comprehensive list of all categories of documentary materials appropriate for preservation by an agency as evidence of its activities or because of the information they contain. In all cases, the agency must consider the intent or circumstances of creation or receipt of the materials to determine whether their systematic maintenance shall be required.

[55 FR 27423, July 2, 1990, as amended at 60 FR 44640, Aug. 28, 1995]

§ 1222.32 General requirements.

Agencies shall identify, develop, issue, and periodically review their recordkeeping requirements for all agency operations and for records in all media, including those records created or received on electronic mail systems. Recordkeeping requirements shall:

(a) Identify and prescribe specific categories of documentary materials to be systematically created or received and maintained by agency personnel in the course of their official duties;

(b) Prescribe the use of materials and recording techniques that ensure the preservation of records as long as they are needed by the Government;

(c) Prescribe the manner in which these materials shall be maintained wherever held; and

(d) Distinguish records from nonrecord materials and, with the approval of the Archivist of the United States, prescribe action for the final disposition of agency records when

they are no longer needed for current business.

[55 FR 27423, July 2, 1990, as amended at 60 FR 44640, Aug. 28, 1995]

§ 1222.34 Identifying Federal records.

(a) *General*. To ensure that complete and accurate records are made and retained in the Federal Government, it is essential that agencies distinguish between records and nonrecord materials by the appropriate application of the definition of records (see 44 U.S.C. 3301 and 36 CFR 1220.14) to agency documentary materials. Applying the definition of records to most documentary materials created or received by agencies presents few problems when agencies have established and periodically updated recordkeeping requirements covering all media and all agency activities at all levels and locations.

(b) *Record status*. Documentary materials are records when they meet both of the following conditions:

(1) They are made or received by an agency of the United States Government under Federal law or in connection with the transaction of agency business; and

(2) They are preserved or are appropriate for preservation as evidence of agency organization and activities or because of the value of the information they contain.

(c) *Working files and similar materials*. Working files, such as preliminary drafts and rough notes, and other similar materials shall be maintained for purposes of adequate and proper documentation if:

(1) They were circulated or made available to employees, other than the creator, for official purposes such as approval, comment, action, recommendation, follow-up, or to communicate with agency staff about agency business; and

(2) They contain unique information, such as substantive annotations or comments included therein, that adds to a proper understanding of the agency's formulation and execution of basic policies, decisions, actions, or responsibilities.

(d) *Record status of copies*. The determination as to whether a particular document is a record does not depend upon whether it contains unique information. Multiple copies of the same document and documents containing duplicative information, including messages created or received on electronic mail systems, may each have record status depending on how they are used to transact agency business. See paragraph (f)(2) of this section concerning the nonrecord status of extra copies.

(e) *Electronic mail messages*. Messages created or received on electronic mail systems may meet the definition of record in 44 U.S.C. 3301.

(f) *Nonrecord materials*. Nonrecord materials are Government-owned documentary materials that do not meet the conditions of record status (see § 1222.34(b)) or that are specifically excluded from status as records by statute (see 44 U.S.C. 3301):

(1) Library and museum material (but only if such material is made or acquired and preserved solely for reference or exhibition purposes);

(2) Extra copies of documents (but only if the sole reason such copies are preserved is for convenience of reference); and

(3) Stocks of publications and of processed documents. (Each agency shall create and maintain serial or record sets of its publications and processed documents, as evidence of agency activities and for the information they contain, including annual reports, brochures, pamphlets, books, handbooks, posters and maps.)

(g) *Agency responsibilities*. Agencies shall take appropriate action to ensure that all staff are capable of identifying Federal records. For electronic mail systems, agencies shall ensure that all staff are informed of the potential record status of messages, transmittal and receipt data, directories, and distribution lists.

[55 FR 27423, July 2, 1990, as amended at 60 FR 44640, Aug. 28, 1995]

§ 1222.36 Identifying personal papers.

(a) Personal papers are documentary materials, or any reasonably segregable portion thereof, of a private or nonpublic character that do not relate to, or have an effect upon, the conduct of agency business. Personal papers are excluded from the definition of Federal

records and are not owned by the Government. Examples of personal papers include:

(1) Materials accumulated by an official before joining Government service that are not used subsequently in the transaction of Government business;

(2) Materials relating solely to an individual's private affairs, such as outside business pursuits, professional affiliations, or private political associations that do not relate to agency business; and

(3) Diaries, journals, personal correspondence, or other personal notes that are not prepared or used for, or circulated or communicated in the course of, transacting Government business.

(b) Personal papers shall be clearly designated as such and shall at all times be maintained separately from the office's records.

(c) If information about private matters and agency business appears in the same document, the document shall be copied at the time of receipt, with the personal information deleted, and treated as a Federal record.

(d) Materials labeled ''personal,'' ''confidential,'' or ''private,'' or similarly designated, and used in the transaction of public business, are Federal records subject to the provisions of pertinent laws and regulations. The use of a label such as ''personal'' is not sufficient to determine the status of documentary materials in a Federal office.

[55 FR 27423, July 2, 1990; 55 FR 28136, July 9, 1990; 55 FR 31982, Aug. 6, 1990]

§ 1222.38 Categories of documentary materials to be covered by recordkeeping requirements.

Agency recordkeeping requirements shall prescribe the creation and maintenance of records of the transaction of agency business that are sufficient to:

(a) Document the persons, places, things, or matters dealt with by the agency.

(b) Facilitate action by agency officials and their successors in office.

(c) Make possible a proper scrutiny by the Congress or other duly authorized agencies of the Government.

(d) Protect the financial, legal, and other rights of the Government and of persons directly affected by the Government's actions.

(e) Document the formulation and execution of basic policies and decisions and the taking of necessary actions, including all significant decisions and commitments reached orally (person to person, by telecommunications, or in conference).

(f) Document important board, committee, or staff meetings.

§ 1222.40 Removal of records.

Agencies shall develop procedures to ensure that departing officials do not remove Federal records from agency custody.

§ 1222.42 Removal of nonrecord materials.

(a) Nonrecord materials, including extra copies of agency records kept only for convenience of reference, may be removed from Government agencies only with the approval of the head of the agency or the individual authorized to act for the agency on matters pertaining to agency records.

(b) Agencies shall ensure that when nonrecord material containing classified information is removed from the executive branch, it is protected under conditions equivalent to those required of executive branch agencies. The originating agency or its successor in function retains control over access to such classified information, even after it is properly removed from the agency.

(c) Agencies shall ensure the appropriate protection of nonrecord material containing information which is restricted from release under the Privacy Act or other statutes, when such restricted nonrecord material is removed from Government agencies.

[56 FR 26336, June 7, 1991]

§ 1222.44 Directives documenting agency programs, policies, and procedures.

Agency recordkeeping requirements shall prescribe that the programs, policies, and procedures of the agency shall be adequately documented in appropriate directives. A record copy of each

such directive (including those superseded) shall be maintained by the appropriate agency directives management officer(s) as part of the official files.

§ 1222.46 Recordkeeping requirements of other agencies.

When statutes, regulations, directives or authoritative issuances of other agencies prescribe an agency's recordkeeping requirements, the agency so affected shall include these in appropriate directives or other authoritative issuances prescribing its organization, functions, or activities.

§ 1222.48 Data created or received and maintained for the Government by contractors.

(a) Contractors performing Congressionally-mandated program functions are likely to create or receive data necessary to provide adequate and proper documentation of these programs and to manage them effectively. Agencies shall specify the delivery of the Government of all data needed for the adequate and proper documentation of contractor-operated programs in accordance with requirements of the Federal Acquisition Regulation (FAR) and, where applicable, the Defense Federal Acquisition Regulation Supplement (DFARS).

(b) When contracts involve the creation of data for the Government's use, in addition to specifying a final product, agency officials may need to specify the delivery of background data that may have reuse value to the Government. Before specifying the background data that contractors must deliver to the agency, program and contracting officials shall consult with agency records and information managers and historians and, when appropriate, with other Government agencies to ensure that all agency and Government needs are met, especially when the data deliverables support a new agency mission or a new Government program.

(c) Deferred ordering and delivery-of-data clauses and rights-in-data clauses shall be included in contracts whenever necessary to ensure adequate and proper documentation or because the data have reuse value to the Government.

(d) When data deliverables include electronic records, the agency shall require the contractor to deliver sufficient technical documentation to permit the agency or other Government agencies to use the data.

(e) All data created for Government use and delivered to, or falling under the legal control of, the Government are Federal records and shall be managed in accordance with records management legislation as codified at 44 U.S.C. chapters 21, 29, 31, and 33, the Freedom of Information Act (5 U.S.C. 552), and the Privacy Act (5 U.S.C. 552a), and shall be scheduled for disposition in accordance with 36 CFR part 1228.

§ 1222.50 Records maintenance and storage.

(a) Agencies shall prescribe an appropriate records maintenance program so that complete records are filed or otherwise identified and preserved, records can be found when needed, the identification and retention of permanent records are facilitated, and permanent and temporary records are physically segregated or, for electronic records, segregable.

(b) Each Federal agency, in providing for effective controls over the maintenance of records, shall:

(1) Establish and implement standards and procedures for classifying, indexing, and filing records as set forth in GSA and NARA handbooks;

(2) Formally specify official file locations for records in all media and prohibit the maintenance of records at unauthorized locations;

(3) Formally specify which officials are responsible for maintenance and disposition of electronic records and which computer systems are used for recordkeeping;

(4) Standardize reference service procedures to facilitate the finding, charging out, and refiling of paper, audiovisual, and cartographic and architectural records, and to ensure that reference to electronic records minimizes the risk of unauthorized additions, deletions, or alterations;

(5) Make available to all agency employees published standards, guides, and instructions designed for easy reference and revision;

(6) Review its records maintenance program periodically to determine its adequacy; audit a representative sample of its paper, audiovisual, electronic, cartographic, and architectural files for duplication, misclassification, or misfiles;

(7) Maintain microform, audiovisual, and electronic records in accordance with 36 CFR parts 1230, 1232, and 1234, respectively;

(8) Establish and implement procedures for maintaining records and nonrecord materials separately; ensure that record materials generated electronically are clearly identified as records and protected from unauthorized change or deletion for the length of their scheduled retention period; and

(9) Establish and implement procedures for the separate maintenance of any personal papers in accordance with § 1222.36.

(c) Agencies must ensure that:

(1) Records in their legal custody sent for off-site storage are maintained in facilities that meet the standards specified in 36 CFR part 1228, subpart K;

(2) The information requirements specified at 36 CFR 1228.154 are met; and

(3) They remove their records from any records storage facility that does not correct nonconformances with the standards specified in 36 CFR part 1228, subpart K. (A facility is compliant if it does not have to meet the standard until a specific date in the future or compliance has been waived by NARA in accordance with 36 CFR 1228.238.) Agencies must initiate removal of the records from such a center within 6 months of initial discovery of the deficiencies by NARA or the agency and to complete removal of the records within 18 months after initial discovery of the deficiencies.

[55 FR 27423, July 2, 1990, as amended at 60 FR 44640, Aug. 28, 1995; 64 FR 67664, Dec. 2, 1999]

PART 1228—DISPOSITION OF FEDERAL RECORDS

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