

or on behalf of an agency or 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 in any medium 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 if the materials are not covered by its current filing or maintenance procedures.

#### § 1222.12 What types of documentary materials are Federal records?

(a) *General*. To ensure that complete and accurate records are made and retained in the Federal Government, agencies must distinguish between records and nonrecord materials by applying the definition of records (see 44 U.S.C. 3301 and 36 CFR 1220.18 and 1222.10 of this subchapter) to agency documentary materials in all formats and media.

(b) *Record status*. Documentary materials are records when they meet the conditions specified in § 1222.10(b).

(c) *Working files and similar materials*. Working files, such as preliminary drafts and rough notes, and other similar materials, are records that must be

maintained to ensure 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 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 may each have record status depending on how they are used in conducting agency business.

#### § 1222.14 What are nonrecord materials?

Nonrecord materials are U.S. Government-owned documentary materials that do not meet the conditions of records status (see § 1222.12(b)) or that are specifically excluded from the statutory definition of records (see 44 U.S.C. 3301). An agency’s records management program also needs to include managing nonrecord materials. There are three specific categories of materials excluded from the statutory definition of records:

(a) Library and museum material (but only if such material is made or acquired and preserved solely for reference or exhibition purposes), including physical exhibits, artifacts, and other material objects lacking evidential value.

(b) Extra copies of documents (but only if the sole reason such copies are preserved is for convenience of reference).

(c) Stocks of publications and of processed documents. Catalogs, trade journals, and other publications that are received from other Government agencies, commercial firms, or private institutions and that require no action and are not part of a case on which action is taken. (Stocks do not include