

records management and record-keeping requirements issued by the Office of Management and Budget, NARA, GSA, or other agencies, as appropriate (see §1222.22 of this subchapter);

(i) Institute controls ensuring that all records, regardless of format or medium, are properly organized, classified or indexed, and described, and made available for use by all appropriate agency staff; and

(j) Conduct formal evaluations to measure the effectiveness of records management programs and practices, and to ensure that they comply with NARA regulations in this subchapter.

## PART 1222—CREATION AND MAINTENANCE OF FEDERAL RECORDS

### Subpart A—Identifying Federal Records

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AUTHORITY: 44 U.S.C. 2904, 3101, 3102, and 3301.

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### Subpart A—Identifying Federal Records

#### § 1222.1 What are the authorities for Part 1222?

The statutory authorities for this part are 44 U.S.C. 2904, 3101, 3102, and 3301.

#### § 1222.2 What definitions apply to this part?

See §1220.18 of this subchapter for definitions of terms used in part 1222.

#### § 1222.3 What standards are used as guidance for this part?

These regulations conform with guidance provided in ISO 15489–1:2001, Information and documentation—Records management. Paragraphs 7.1 (Principles of records management programmes), 7.2 (Characteristics of a record), 8.3.5 (Conversion and migration), 8.3.6 (Access, retrieval and use), and 9.6 (Storage and handling) apply to records creation and maintenance.

#### § 1222.10 How should agencies apply the statutory definition of Federal records?

(a) The statutory definition of Federal records is contained in 44 U.S.C. 3301 and provided in §1220.18 of this subchapter.

(b) Several key terms, phrases, and concepts in the statutory definition of a Federal record are further explained as follows:

(1) *Documentary materials* has the meaning provided in §1220.18 of this subchapter.

(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.

(4) *Received* means the acceptance or collection of documentary materials by

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

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serial or record sets of agency publications and processed documents, including annual reports, brochures, pamphlets, books, handbooks, posters and maps.)

### § 1222.16 How are nonrecord materials managed?

(a) Agencies must develop record-keeping requirements to distinguish records from nonrecord materials.

(b) The following guidelines should be used in managing nonrecord materials:

(1) If a clear determination cannot be made, the materials should be treated as records. Agencies may consult with NARA for guidance.

(2) Nonrecord materials must be physically segregated from records or, for electronic non-record materials, readily identified and segregable from records;

(3) Nonrecord materials should be purged when no longer needed for reference. NARA's approval is not required to destroy such materials.

### § 1222.18 Under what conditions may nonrecord materials be removed from Government agencies?

(a) Nonrecord materials, including extra copies of unclassified or formally declassified agency records kept only for convenience of reference, may be removed by departing employees from Government agency custody only with the approval of the head of the agency or the individual(s) authorized to act for the agency on records issues.

(b) National security classified information may not be removed from Government custody, except for a removal of custody taken in accordance with the requirements of the National Industrial Security Program established under Executive Order 12829, as amended, or a successor Order.

(c) Information which is restricted from release under the Privacy Act of 1974 (5 U.S.C. 552a), as amended, or other statutes may not be removed from Government custody except as permitted under those statutes.

(d) This section does not apply to use of records and nonrecord materials in the course of conducting official agency business, including telework and authorized dissemination of information.

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### § 1222.20 How are personal files defined and managed?

(a) Personal files are defined in § 1220.18 of this subchapter. This section does not apply to agencies and positions that are covered by the Presidential Records Act of 1978 (44 U.S.C. 2201-2207) (see 36 CFR part 1270 of this chapter).

(b) Personal files must be clearly designated as such and must be maintained separately from the office's official records.

(1) Information about private (non-agency) matters and agency business must not be mixed in outgoing agency documents, such as correspondence and messages.

(2) If information about private matters and agency business appears in a received document, the document is a Federal record. Agencies may make a copy of the document with the personal information deleted or redacted, and treat the copy as the Federal record.

(3) Materials labeled "personal," "confidential," or "private," or similarly designated, and used in the transaction of public business, are Federal records. The use of a label such as "personal" does not affect the status of documentary materials in a Federal agency.

## Subpart B—Agency Recordkeeping Requirements

### § 1222.22 What records are required to provide for adequate documentation of agency business?

To meet their obligation for adequate and proper documentation, agencies must prescribe the creation and maintenance of records that:

(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 substantive decisions and commitments reached orally (person-to-person, by telecommunications, or in conference) or electronically.

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

**§ 1222.24 How do agencies establish recordkeeping requirements?**

(a) Agencies must ensure that procedures, directives and other issuances; systems planning and development documentation; and other relevant records include recordkeeping requirements for records in all media, including those records created or received on electronic mail systems. Recordkeeping requirements must:

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

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

(3) Specify the manner in which these materials must be maintained wherever held;

(4) Propose how long records must be maintained for agency business through the scheduling process in part 1225 of this subchapter;

(5) Distinguish records from non-record materials and comply with the provisions in Subchapter B concerning records scheduling and disposition;

(6) Include procedures to ensure that departing officials and employees do not remove Federal records from agency custody and remove nonrecord materials only in accordance with § 1222.18;

(7) Define the special recordkeeping responsibilities of program managers, information technology staff, systems administrators, and the general recordkeeping responsibilities of all agency employees.

(b) Agencies must provide the training described in § 1220.34(f) of this subchapter and inform all employees that they are responsible and accountable

for keeping accurate and complete records of their activities.

**§ 1222.26 What are the general recordkeeping requirements for agency programs?**

To ensure the adequate and proper documentation of agency programs, each program must develop recordkeeping requirements that identify:

(a) The record series and systems that must be created and maintained to document program policies, procedures, functions, activities, and transactions;

(b) The office responsible for maintaining the record copies of those series and systems, and the applicable system administrator responsible for ensuring authenticity, protection, and ready retrieval of electronic records;

(c) Related records series and systems;

(d) The relationship between paper and electronic files in the same series; and

(e) Policies, procedures, and strategies for ensuring that records are retained long enough to meet programmatic, administrative, fiscal, legal, and historical needs as authorized in a NARA-approved disposition schedule.

**§ 1222.28 What are the series level recordkeeping requirements?**

To ensure that record series and systems adequately document agency policies, transactions, and activities, each program must develop recordkeeping requirements for records series and systems that include:

(a) Identification of information and documentation that must be included in the series and/or system;

(b) Arrangement of each series and the records within the series and/or system;

(c) Identification of the location of the records and the staff responsible for maintaining the records;

(d) Policies and procedures for maintaining the documentation of phone calls, meetings, instant messages, and electronic mail exchanges that include substantive information about agency policies and activities;

(e) Policies and procedures for identifying working files and for determining

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the record status of working files in paper and electronic form; and

(f) Policies and procedures for maintaining series consisting of different media.

### **§ 1222.30 When must agencies comply with the recordkeeping requirements of other agencies?**

Agencies must comply with recordkeeping requirements that are imposed government-wide by another agency with jurisdiction over the program or activity being conducted, e.g., requirements for records concerning hazardous waste. Affected agencies must include these requirements in appropriate directives or other official issuances prescribing the agency's organization, functions, or activities.

### **§ 1222.32 How do agencies manage records created or received by contractors?**

(a) Agency officials responsible for administering contracts must safeguard records created, processed, or in the possession of a contractor or a non-Federal entity by taking the following steps:

(1) Agencies must ensure that contractors performing Federal government agency functions create and maintain records that document these activities. Agencies must specify in the contract Government ownership and the delivery to the Government of all records necessary for the adequate and proper documentation of contractor-operated agency activities and programs in accordance with requirements of the Federal Acquisition Regulation (FAR) (Office of Federal Procurement Policy Act of 1974 (Pub. L. 93-400), as amended by Pub. L. 96-83 41 U.S.C.), and, where applicable, the Defense Federal Acquisition Regulation Supplement (DFARS) (48 CFR parts 200-299).

(2) Records management oversight of contract records is necessary to ensure that all recordkeeping needs are met. All records created for Government use and delivered to, or under the legal control of, the Government must be managed in accordance with Federal law. In addition, electronic records and background electronic data specified for delivery to the contracting agency must be accompanied by sufficient

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technical documentation to permit understanding and use of the records and data.

(3) Contracts that require the creation of data for the Government's use must specify, in addition to the final product, delivery of background supporting data or other records that may have reuse value to the Government. To determine what background supporting data or other records that contractors must deliver, program and contracting officials must consult with agency records and information managers and historians and, when appropriate, with other Government agencies to ensure that all Government needs are met, especially when the data deliverables support a new agency mission or a new Government program.

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

(b) All data created for Government use and delivered to, or falling under the legal control of, the Government are Federal records subject to the provisions of 44 U.S.C. chapters 21, 29, 31, and 33, the Freedom of Information Act (FOIA) (5 U.S.C. 552), as amended, and the Privacy Act of 1974 (5 U.S.C. 552a), as amended, and must be managed and scheduled for disposition only as provided in Subchapter B.

(c) Agencies must ensure that appropriate authority for retention of classified materials has been granted to contractors or non-Government entities participating in the National Industrial Security Program (NISP), established under Executive order 12829, as amended, or a successor Order.

### **§ 1222.34 How must agencies maintain records?**

Agencies must implement a records maintenance program so that complete records are filed or otherwise identified and preserved, records can be readily found when needed, and permanent and temporary records are physically segregated from each other or, for electronic records, segregable. Agency records maintenance programs must:

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(a) Institute procedures for organizing and storing records;

(b) Maintain electronic, audiovisual and cartographic, and microform records in accordance with 36 CFR parts 1236, 1237, and 1238 of this subchapter, respectively;

(c) Assign responsibilities for maintenance of records in all formats within each agency component, including designation of the officials that are responsible for maintenance and disposition of electronic records and management of automated systems used for recordkeeping;

(d) Institute reference and retrieval procedures and controls that:

(1) Facilitate the finding, charging out, and refiling of records, including safeguards against loss during transit; and

(2) Ensure that access to electronic records minimizes the risk of unauthorized additions, deletions, or alterations;

(e) Issue appropriate instructions to all agency employees on handling and protecting records;

(f) Maintain records and nonrecord materials separately, in accordance with § 1222.16;

(g) Maintain personal files separately from records in accordance with § 1222.20; and

(h) Comply with 36 CFR parts 1232 and 1234 of this subchapter when storing records in a records facility.

### PART 1223—MANAGING VITAL RECORDS

Sec.

1223.1 What are the authorities for Part 1223?

1223.2 What definitions apply to this part?

1223.3 What standards are used as guidance for Part 1223?

1223.4 What publications are incorporated by reference in this part?

1223.10 What is the purpose of Part 1223?

1223.12 What are the objectives of a vital records program?

1223.14 What elements must a vital records program include?

1223.16 How are vital records identified?

1223.18 Must vital records be in a particular form or format?

1223.20 What are the requirements for accessing vital records during an emergency?

1223.22 How must agencies protect vital records?

1223.24 When can vital records be destroyed?

AUTHORITY: 44 U.S.C. 3101; E.O. 12656, 53 FR 47491; E.O. 13231, 66 FR 53063.

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#### § 1223.1 What are the authorities for Part 1223?

(a) The authorities for this part are 44 U.S.C. 3101; Executive Orders 12656, Assignment of Emergency Preparedness Responsibilities, and 13231, Critical Infrastructure Protection in the Information Age; and National Security Presidential Directive (NSPD 51)/Homeland Security Presidential Directive (HSPD-20) or applicable successor directives. These authorities require the head of each agency to make and preserve records that contain adequate and proper documentation of the organization and to perform national security emergency preparedness functions.

(b) These regulations are in conformance with guidance provided in Federal Continuity Directive (FCD) 1, Federal Executive Branch National Continuity Program and Requirements, and FCD 2, Federal Executive Branch Mission Essential Function and Primary Mission Essential Function Identification and Submission Process.

#### § 1223.2 What definitions apply to this part?

(a) See § 1220.18 of this subchapter for definitions of terms used throughout Subchapter B, including part 1223.

(b) As used in part 1223—

*Cycle* means the periodic removal of obsolete copies of vital records and their replacement with copies of current vital records. This may occur daily, weekly, quarterly, annually or at other designated intervals.

*Disaster* means an unexpected occurrence inflicting widespread destruction and distress and having long-term adverse effects on agency operations. Each agency defines what a long-term adverse effect is in relation to its most critical program activities.

*Emergency* means a situation or an occurrence of a serious nature, developing suddenly and unexpectedly, and demanding immediate action. This is