

§ 1222.38

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 record-keeping 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

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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 telecommunication, 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;