

## Department of Justice

## § 75.1

### V. *One Document of Name Change*

If your current legal last name is the same as the last name of the deceased eligible individual this section does not apply.

This section is only required for persons whose current legal last name is different from the last name of the deceased eligible.

1. A certified copy of the public record of marriage.
2. A certified copy of the divorce decree.
3. A certified copy of the court order of a name change.
4. Affidavits or sworn statements of two or more persons attesting to the name change.

### VI. *One Document of Evidence of Guardianship*

If you are executing this document for the person identified as eligible, you must submit evidence of your authority.

If you are the legally-appointed guardian, committee, or other legally-designated representative of such an individual, the evidence shall be a certificate executed by the proper official of the court appointment.

If you are not such a legally-designated representative, the evidence shall be an affidavit describing your relationship to the recipient or the extent to which you have the care of the recipient or your position as an officer of the institution in which the recipient is institutionalized.

## **PART 75—CHILD PROTECTION RESTORATION AND PENALTIES ENHANCEMENT ACT OF 1990; PROTECT ACT; ADAM WALSH CHILD PROTECTION AND SAFETY ACT OF 2006; RECORDKEEPING AND RECORD-INSPECTION PROVISIONS**

- Sec.
- 75.1 Definitions.
  - 75.2 Maintenance of records.
  - 75.3 Categorization of records.
  - 75.4 Location of records.
  - 75.5 Inspection of records.
  - 75.6 Statement describing location of books and records.
  - 75.7 Exemption statement.
  - 75.8 Location of the statement.
  - 75.9 Certification of records.

AUTHORITY: 18 U.S.C. 2257, 2257A.

SOURCE: Order No. 2765-2005, 70 FR 29619, May 24, 2005, unless otherwise noted.

### **§ 75.1 Definitions.**

(a) Terms used in this part shall have the meanings set forth in 18 U.S.C. 2257, and as provided in this section. The terms used and defined in these regula-

tions are intended to provide common-language guidance and usage and are not meant to exclude technologies or uses of these terms as otherwise employed in practice or defined in other regulations or federal statutes (*i.e.*, 47 U.S.C. 230, 231).

(b) *Picture identification card* means a document issued by the United States, a State government, or a political subdivision thereof, or a United States territory, that bears the photograph, the name of the individual identified, and the date of birth of that individual, and provides specific information sufficient for the issuing authority to confirm its validity, such as a passport, Permanent Resident Card (commonly known as a “Green Card”), or employment authorization document issued by the United States, a driver’s license or other form of identification issued by a State or the District of Columbia; or a foreign government-issued equivalent of any of the documents listed above when the person who is the subject of the picture identification card is a non-U.S. citizen located outside the United States at the time of original production and the producer maintaining the required records, whether a U.S. citizen or non-U.S. citizen, is located outside the United States on the original production date. The picture identification card must be valid as of the original production date.

(c) *Producer* means any person, including any individual, corporation, or other organization, who is a primary producer or a secondary producer.

(1) *Primary producer* is any person who actually films, videotapes, photographs, or creates a digitally- or computer-manipulated image, a digital image, or a picture of, or who digitizes an image of, a visual depiction of an actual human being engaged in actual or simulated sexually explicit conduct. When a corporation or other organization is the primary producer of any particular image or picture, then no individual employee or agent of that corporation or other organization will be considered to be a primary producer of that image or picture.

(2) *Secondary producer* is any person who produces, assembles, manufactures, publishes, duplicates, reproduces, or reissues a book, magazine, periodical, film, videotape, or digitally- or computer-manipulated image, picture, or other matter intended for commercial distribution that contains a visual depiction of an actual human being engaged in actual or simulated sexually explicit conduct, or who inserts on a computer site or service a digital image of, or otherwise manages the sexually explicit content of a computer site or service that contains a visual depiction of, an actual human being engaged in actual or simulated sexually explicit conduct, including any person who enters into a contract, agreement, or conspiracy to do any of the foregoing. When a corporation or other organization is the secondary producer of any particular image or picture, then no individual of that corporation or other organization will be considered to be the secondary producer of that image or picture.

(3) The same person may be both a primary and a secondary producer.

(4) Producer does not include persons whose activities relating to the visual depiction of actual or simulated sexually explicit conduct are limited to the following:

(i) Photo or film processing, including digitization of previously existing visual depictions, as part of a commercial enterprise, with no other commercial interest in the sexually explicit material, printing, and video duplication;

(ii) Distribution;

(iii) Any activity, other than those activities identified in paragraphs (c)(1) and (2) of this section, that does not involve the hiring, contracting for, managing, or otherwise arranging for the participation of the depicted performers;

(iv) The provision of a telecommunications service, or of an Internet access service of Internet information location tool (as those terms are defined in section 231 of the Communications Act of 1934 (47 U.S.C. 231));

(v) The transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication, without selection or

alteration of the content of the communication, except that deletion of a particular communication or material made by another person in a manner consistent with section 230(c) of the Communications Act of 1934 (47 U.S.C. 230(c)) shall not constitute such selection or alteration of the content of the communication; or

(vi) Unless the activity or activities are described in section 2257(h)(2)(A), the dissemination of a depiction without having created it or altered its content.

(d) *Sell, distribute, redistribute, and re-release* refer to commercial distribution of a book, magazine, periodical, film, videotape, digitally- or computer-manipulated image, digital image, picture, or other matter that contains a visual depiction of an actual human being engaged in actual or simulated sexually explicit conduct, but does not refer to noncommercial or educational distribution of such matter, including transfers conducted by bona fide lending libraries, museums, schools, or educational organizations.

(e) *Copy*, when used:

(1) In reference to an identification document or a picture identification card, means a photocopy, photograph, or digitally scanned reproduction;

(2) In reference to a visual depiction of sexually explicit conduct, means a duplicate of the depiction itself (e.g., the film, the image on a Web site, the image taken by a webcam, the photo in a magazine); and

(3) In reference to an image on a webpage for purposes of §§ 75.6(a), 75.7(a), and 75.7(b), means every page of a Web site on which the image appears.

(f) *Internet* means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which constitute the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(g) *Computer site or service* means a computer server-based file repository or file distribution service that is accessible over the Internet, World Wide Web, Usenet, or any other interactive

## Department of Justice

## § 75.2

computer service (as defined in 47 U.S.C. 230(f)(2)). Computer site or service includes without limitation, sites or services using hypertext markup language, hypertext transfer protocol, file transfer protocol, electronic mail transmission protocols, similar data transmission protocols, or any successor protocols, including but not limited to computer sites or services on the World Wide Web.

(h) *URL* means uniform resource locator.

(i) *Electronic communications service* has the meaning set forth in 18 U.S.C. 2510(15).

(j) *Remote computing service* has the meaning set forth in 18 U.S.C. 2711(2).

(k) *Manage content* means to make editorial or managerial decisions concerning the sexually explicit content of a computer site or service, but does not mean those who manage solely advertising, compliance with copyright law, or other forms of non-sexually explicit content.

(l) *Interactive computer service* has the meaning set forth in 47 U.S.C. 230(f)(2).

(m) *Date of original production or original production date* means the date the primary producer actually filmed, videotaped, or photographed, or created a digitally- or computer-manipulated image or picture of, the visual depiction of an actual human being engaged in actual or simulated sexually explicit conduct. For productions that occur over more than one date, it means the single date that was the first of those dates. For a performer who was not 18 as of this date, the date of original production is the date that such a performer was first actually filmed, videotaped, photographed, or otherwise depicted. With respect to matter that is a secondarily produced compilation of individual, primarily produced depictions, the date of original production of the matter is the earliest date after July 3, 1995, on which any individual depiction in that compilation was produced. For a performer in one of the individual depictions contained in that compilation who was not 18 as of this date, the date of original production is the date that the performer was first actually filmed, videotaped, photographed, or otherwise

depicted for the individual depiction at issue.

(n) *Sexually explicit conduct* has the meaning set forth in 18 U.S.C. 2256(2)(A).

(o) *Simulated sexually explicit conduct* means conduct engaged in by performers that is depicted in a manner that would cause a reasonable viewer to believe that the performers engaged in actual sexually explicit conduct, even if they did not in fact do so. It does not mean not sexually explicit conduct that is merely suggested.

(p) *Regularly and in the normal course of business collects and maintains* means any business practice(s) that ensure that the producer confirms the identity and age of all employees who perform in visual depictions.

(q) *Individually identifiable information* means information about the name, address, and date of birth of employees that is capable of being retrieved on the basis of a name of an employee who appears in a specified visual depiction.

(r) *All performers, including minor performers* means all performers who appear in any visual depiction, no matter for how short a period of time.

(s) *Employed by* means, in reference to a performer, one who receives pay for performing in a visual depiction or is otherwise in an employer-employee relationship with the producer of the visual depiction as evidenced by oral or written agreements.

[Order No. 2765-2005, 70 FR 29619, May 24, 2005, as amended at 73 FR 77468, Dec. 18, 2008]

### § 75.2 Maintenance of records.

(a) Any producer of any book, magazine, periodical, film, videotape, digitally- or computer-manipulated image, digital image, picture, or other matter that is produced in whole or in part with materials that have been mailed or shipped in interstate or foreign commerce, or is shipped, transported, or intended for shipment or transportation in interstate or foreign commerce, and that contains one or more visual depictions of an actual human being engaged in actual sexually explicit conduct (except lascivious exhibition of the genitals or pubic area of any person) made after July 3, 1995, or one or more visual depictions of an

**§ 75.2**

**28 CFR Ch. I (7-1-15 Edition)**

actual human being engaged in simulated sexually explicit conduct or in actual sexually explicit conduct limited to lascivious exhibition of the genitals or pubic area of any person made after March 18, 2009, shall, for each performer portrayed in such visual depiction, create and maintain records containing the following:

(1) The legal name and date of birth of each performer, obtained by the producer's examination of a picture identification card prior to production of the depiction. For any performer portrayed in a depiction of an actual human being engaged in actual sexually explicit conduct (except lascivious exhibition of the genitals or pubic area of any person) made after July 3, 1995, or of an actual human being engaged in simulated sexually explicit conduct or in actual sexually explicit conduct limited to lascivious exhibition of the genitals or pubic area of any person made after March 18, 2009, the records shall also include a legible hard copy or legible digitally scanned or other electronic copy of a hard copy of the identification document examined and, if that document does not contain a recent and recognizable picture of the performer, a legible hard copy of a picture identification card. For any performer portrayed in a depiction of an actual human being engaged in actual sexually explicit conduct (except lascivious exhibition of the genitals or pubic area of any person) made after June 23, 2005, or of an actual human being engaged in simulated sexually explicit conduct or in actual sexually explicit conduct limited to lascivious exhibition of the genitals or pubic area of any person made after March 18, 2009, the records shall include a copy of the depiction, and, where the depiction is published on an Internet computer site or service, a copy of any URL associated with the depiction. If no URL is associated with the depiction, the records shall include another uniquely identifying reference associated with the location of the depiction on the Internet. For any performer in a depiction performed live on the Internet, the records shall include a copy of the depiction with running-time sufficient to identify the performer in the depiction and to associate the performer with the

records needed to confirm his or her age.

(2) Any name, other than the performer's legal name, ever used by the performer, including the performer's maiden name, alias, nickname, stage name, or professional name. For any performer portrayed in a visual depiction of an actual human being engaged in actual sexually explicit conduct (except lascivious exhibition of the genitals or pubic area of any person) made after July 3, 1995, or of an actual human being engaged in simulated sexually explicit conduct or in actual sexually explicit conduct limited to lascivious exhibition of the genitals or pubic area of any person made after March 18, 2009, such names shall be indexed by the title or identifying number of the book, magazine, film, videotape, digitally- or computer-manipulated image, digital image, picture, URL, or other matter. Producers may rely in good faith on representations by performers regarding accuracy of the names, other than legal names, used by performers.

(3) Records required to be created and maintained under this part shall be organized alphabetically, or numerically where appropriate, by the legal name of the performer (by last or family name, then first or given name), and shall be indexed or cross-referenced to each alias or other name used and to each title or identifying number of the book, magazine, film, videotape, digitally- or computer-manipulated image, digital image, picture, URL, or other matter.

(4) The primary producer shall create a record of the date of original production of the depiction.

(b) A producer who is a secondary producer as defined in § 75.1(c) may satisfy the requirements of this part to create and maintain records by accepting from the primary producer, as defined in § 75.1(c), copies of the records described in paragraph (a) of this section. Such a secondary producer shall also keep records of the name and address of the primary producer from whom he received copies of the records. The copies of the records may be redacted to eliminate non-essential information, including addresses, phone numbers, social security numbers, and

other information not necessary to confirm the name and age of the performer. However, the identification number of the picture identification card presented to confirm the name and age may not be redacted.

(c) The information contained in the records required to be created and maintained by this part need be current only as of the date of original production of the visual depiction to which the records are associated. If the producer subsequently produces an additional book, magazine, film, videotape, digitally- or computer-manipulated image, digital image, or picture, or other matter (including but not limited to an Internet computer site or service) that contains one or more visual depictions of an actual human being engaged in actual or simulated sexually explicit conduct made by a performer for whom he maintains records as required by this part, the producer may add the additional title or identifying number and the names of the performer to the existing records maintained pursuant to § 75.2(a)(2). Producers of visual depictions made after July 3, 1995, and before June 23, 2005, may rely on picture identification cards that were valid forms of required identification under the provisions of part 75 in effect during that time period.

(d) For any record of a performer in a visual depiction of actual sexually explicit conduct (except lascivious exhibition of the genitals or pubic area of any person) created or amended after June 23, 2005, or of a performer in a visual depiction of simulated sexually explicit conduct or actual sexually explicit conduct limited to lascivious exhibition of the genitals or pubic area of any person made after March 18, 2009, all such records shall be organized alphabetically, or numerically where appropriate, by the legal name of the performer (by last or family name, then first or given name), and shall be indexed or cross-referenced to each alias or other name used and to each title or identifying number of the book, magazine, film, videotape, digitally- or computer-manipulated image, digital image, or picture, or other matter (including but not limited to an Internet computer site or service). If the pro-

ducer subsequently produces an additional book, magazine, film, videotape, digitally- or computer-manipulated image, digital image, or picture, or other matter (including but not limited to an Internet computer site or service) that contains one or more visual depictions of an actual human being engaged in actual or simulated sexually explicit conduct made by a performer for whom he maintains records as required by this part, the producer shall add the additional title or identifying number and the names of the performer to the existing records, and such records shall thereafter be maintained in accordance with this paragraph.

(e) Records required to be maintained under this part shall be segregated from all other records, shall not contain any other records, and shall not be contained within any other records.

(f) Records required to be maintained under this part may be kept either in hard copy or in digital form, provided that they include scanned copies of forms of identification and that there is a custodian of the records who can authenticate each digital record.

(g) Records are not required to be maintained by either a primary producer or by a secondary producer for a visual depiction of sexually explicit conduct that consists only of lascivious exhibition of the genitals or pubic area of a person, and contains no other sexually explicit conduct, whose original production date was prior to March 18, 2009.

(h) A primary or secondary producer may contract with a non-employee custodian to retain copies of the records that are required under this part. Such custodian must comply with all obligations related to records that are required by this Part, and such a contract does not relieve the producer of his liability under this part.

[Order No. 2765-2005, 70 FR 29619, May 24, 2005, as amended at 73 FR 77469, Dec. 18, 2008]

### § 75.3 Categorization of records.

Records required to be maintained under this part shall be categorized alphabetically, or numerically where appropriate, and retrievable to: All name(s) of each performer, including any alias, maiden name, nickname, stage name or professional name of the

## § 75.4

## 28 CFR Ch. I (7–1–15 Edition)

performer; and according to the title, number, or other similar identifier of each book, magazine, periodical, film, videotape, digitally- or computer-manipulated image, digital image, or picture, or other matter (including but not limited to Internet computer site or services). Only one copy of each picture of a performer's picture identification card and identification document must be kept as long as each copy is categorized and retrievable according to any name, real or assumed, used by such performer, and according to any title or other identifier of the matter.

### § 75.4 Location of records.

Any producer required by this part to maintain records shall make such records available at the producer's place of business or at the place of business of a non-employee custodian of records. Each record shall be maintained for seven years from the date of creation or last amendment or addition. If the producer ceases to carry on the business, the records shall be maintained for five years thereafter. If the producer produces the book, magazine, periodical, film, videotape, digitally- or computer-manipulated image, digital image, or picture, or other matter (including but not limited to Internet computer site or services) as part of his control of or through his employment with an organization, records shall be made available at the organization's place of business or at the place of business of a non-employee custodian of records. If the organization is dissolved, the person who was responsible for maintaining the records, as described in § 75.6(b), shall continue to maintain the records for a period of five years after dissolution.

[73 FR 77470, Dec. 18, 2008]

### § 75.5 Inspection of records.

(a) *Authority to inspect.* Investigators authorized by the Attorney General (hereinafter "investigators") are authorized to enter without delay and at reasonable times any establishment of a producer where records under § 75.2 are maintained to inspect during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, for the purpose of determining compliance

with the record-keeping requirements of the Act and any other provision of the Act (hereinafter "investigator").

(b) *Advance notice of inspections.* Advance notice of record inspections shall not be given.

(c) *Conduct of inspections.* (1) Inspections shall take place during normal business hours and at such places as specified in § 75.4. For the purpose of this part, "normal business hours" are from 9 a.m. to 5 p.m., local time, Monday through Friday, or, for inspections to be held at the place of business of a producer, any other time during which the producer is actually conducting business relating to producing a depiction of actual sexually explicit conduct. To the extent that the producer does not maintain at least 20 normal business hours per week, the producer must provide notice to the inspecting agency of the hours during which records will be available for inspection, which in no case may be less than 20 hours per week.

(2) Upon commencing an inspection, the investigator shall:

(i) Present his or her credentials to the owner, operator, or agent in charge of the establishment;

(ii) Explain the nature and purpose of the inspection, including the limited nature of the records inspection, and the records required to be kept by the Act and this part; and

(iii) Indicate the scope of the specific inspection and the records that he or she wishes to inspect.

(3) The inspections shall be conducted so as not to unreasonably disrupt the operations of the establishment.

(4) At the conclusion of an inspection, the investigator may informally advise the producer or his non-employee custodian of records of any apparent violations disclosed by the inspection. The producer or non-employee custodian or records may bring to the attention of the investigator any pertinent information regarding the records inspected or any other relevant matter.

(d) *Frequency of inspections.* Records may be inspected once during any four-month period, unless there is a reasonable suspicion to believe that a violation of this part has occurred, in which

## Department of Justice

## § 75.7

case an additional inspection or inspections may be conducted before the four-month period has expired.

(e) *Copies of records.* An investigator may copy, at no expense to the producer or to his non-employee custodian of records, during the inspection, any record that is subject to inspection.

(f) *Other law enforcement authority.* These regulations do not restrict the otherwise lawful investigative prerogatives of an investigator while conducting an inspection.

(g) *Seizure of evidence.* Notwithstanding any provision of this part or any other regulation, a law enforcement officer may seize any evidence of the commission of any felony while conducting an inspection.

[Order No. 2765-2005, 70 FR 29619, May 24, 2005, as amended at 73 FR 77470, Dec. 18, 2008]

### § 75.6 Statement describing location of books and records.

(a) Any producer of any book, magazine, periodical, film, videotape, digitally- or computer-manipulated image, digital image, or picture, or other matter (including but not limited to an Internet computer site or service) that contains one or more visual depictions of an actual human being engaged in actual sexually explicit conduct made after July 3, 1995, and produced, manufactured, published, duplicated, reproduced, or reissued after July 3, 1995, or of a performer in a visual depiction of simulated sexually explicit conduct or actual sexually explicit conduct limited to lascivious exhibition of the genitals or pubic area of any person made after March 18, 2009, shall cause to be affixed to every copy of the matter a statement describing the location of the records required by this part. A producer may cause such statement to be affixed, for example, by instructing the manufacturer of the book, magazine, periodical, film, videotape, digitally- or computer-manipulated image, digital image, picture, or other matter to affix the statement. In this paragraph, the term “copy” includes every page of a Web site on which a visual depiction of an actual human being engaged in actual or simulated sexually explicit conduct appears.

(b) Every statement shall contain:

(1) The title of the book, magazine, periodical, film, or videotape, digitally- or computer-manipulated image, digital image, picture, or other matter (unless the title is prominently set out elsewhere in the book, magazine, periodical, film, or videotape, digitally- or computer-manipulated image, digital image, picture, or other matter) or, if there is no title, an identifying number or similar identifier that differentiates this matter from other matters which the producer has produced;

(2) [Reserved]

(3) A street address at which the records required by this part may be made available. A post office box address does not satisfy this requirement.

(c) If the producer is an organization, the statement shall also contain the title and business address of the person who is responsible for maintaining the records required by this part.

(d) The information contained in the statement must be accurate as of the date on which the book, magazine, periodical, film, videotape, digitally or computer-manipulated image, digital image, picture, or other matter is produced or reproduced.

(e) For the purposes of this section, the required statement shall be displayed in typeface that is no less than 12-point type or no smaller than the second-largest typeface on the material and in a color that clearly contrasts with the background color of the material. For any electronic or other display of the notice that is limited in time, the notice must be displayed for a sufficient duration and of a sufficient size to be capable of being read by the average viewer.

(f) If the producer contracts with a non-employee custodian of records to serve as the person responsible for maintaining his records, the statement shall contain the name and business address of that custodian and may contain that information in lieu of the information required in paragraphs (b)(3) and (c) of this section.

[Order No. 2765-2005, 70 FR 29619, May 24, 2005, as amended at 73 FR 77470, Dec. 18, 2008]

### § 75.7 Exemption statement.

(a) Any producer of any book, magazine, periodical, film, videotape, digitally- or computer-manipulated

## § 75.8

## 28 CFR Ch. I (7–1–15 Edition)

image, digital image, picture, or other matter may cause to be affixed to every copy of the matter a statement attesting that the matter is not covered by the record-keeping requirements of 18 U.S.C. 2257(a)–(c) or 18 U.S.C. 2257A(a)–(c), as applicable, and of this part if:

(1) The matter contains visual depictions of actual sexually explicit conduct made only before July 3, 1995, or was last produced, manufactured, published, duplicated, reproduced, or re-issued before July 3, 1995. Where the matter consists of a compilation of separate primarily produced depictions, the entirety of the conduct depicted was produced prior to July 3, 1995, regardless of the date of secondary production;

(2) The matter contains only visual depictions of simulated sexually explicit conduct or of actual sexually explicit conduct limited to lascivious exhibition of the genitals or pubic area of any person, made before March 18, 2009;

(3) The matter contains only some combination of the visual depictions described in paragraphs (a)(1) and (a)(2) of this section.

(b) If the primary producer and the secondary producer are different entities, the primary producer may certify to the secondary producer that the visual depictions in the matter satisfy the standards under paragraphs (a)(1) through (a)(3) of this section. The secondary producer may then cause to be affixed to every copy of the matter a statement attesting that the matter is not covered by the record-keeping requirements of 18 U.S.C. 2257(a)–(c) or 18 U.S.C. 2257A(a)–(c), as applicable, and of this part.

[73 FR 77471, Dec. 18, 2008]

### § 75.8 Location of the statement.

(a) All books, magazines, and periodicals shall contain the statement required in § 75.6 or suggested in § 75.7 either on the first page that appears after the front cover or on the page on which copyright information appears.

(b) In any film or videotape which contains end credits for the production, direction, distribution, or other activity in connection with the film or videotape, the statement referred to in § 75.6 or § 75.7 shall be presented at the

end of the end titles or final credits and shall be displayed for a sufficient duration to be capable of being read by the average viewer.

(c) Any other film or videotape shall contain the required statement within one minute from the start of the film or videotape, and before the opening scene, and shall display the statement for a sufficient duration to be read by the average viewer.

(d) A computer site or service or Web address containing a digitally- or computer-manipulated image, digital image, or picture shall contain the required statement on every page of a Web site on which a visual depiction of an actual human being engaged in actual or simulated sexually explicit conduct appears. Such computer site or service or Web address may choose to display the required statement in a separate window that opens upon the viewer's clicking or mousing-over a hypertext link that states, "18 U.S.C. 2257 [and/or 2257A, as appropriate] Record-Keeping Requirements Compliance Statement."

(e) For purpose of this section, a digital video disc (DVD) containing multiple depictions is a single matter for which the statement may be located in a single place covering all depictions on the DVD.

(f) For all other categories not otherwise mentioned in this section, the statement is to be prominently displayed consistent with the manner of display required for the aforementioned categories.

[Order No. 2765–2005, 70 FR 29619, May 24, 2005, as amended at 73 FR 77471, Dec. 18, 2008]

### § 75.9 Certification of records.

(a) *In general.* The provisions of §§ 75.2 through 75.8 shall not apply to a visual depiction of actual sexually explicit conduct constituting lascivious exhibition of the genitals or pubic area of a person or to a visual depiction of simulated sexually explicit conduct if all of the following requirements are met:

(1) The visual depiction is intended for commercial distribution;

(2) The visual depiction is created as a part of a commercial enterprise;

(3) Either—

(i) The visual depiction is not produced, marketed or made available in



## Department of Justice

## § 75.9

circumstances such that an ordinary person would conclude that the matter contains a visual depiction that is child pornography as defined in 18 U.S.C. 2256(8), or,

(ii) The visual depiction is subject to regulation by the Federal Communications Commission acting in its capacity to enforce 18 U.S.C. 1464 regarding the broadcast of obscene, indecent, or profane programming; and

(4) The producer of the visual depiction certifies to the Attorney General that he regularly and in the normal course of business collects and maintains individually identifiable information regarding all performers, including minor performers, employed by that person, pursuant to Federal and State tax, labor, and other laws, labor agreements, or otherwise pursuant to industry standards, where such information includes the name, address, and date of birth of the performer. (A producer of materials depicting sexually explicit conduct not covered by the certification regime is not disqualified from using the certification regime for materials covered by the certification regime.)

(b) *Form of certification.* The certification shall take the form of a letter addressed to the Attorney General signed either by the chief executive officer or another executive officer of the entity making the certification, or in the event the entity does not have a chief executive officer or other executive officer, the senior manager responsible for overseeing the entity's activities.

(c) *Content of certification.* The certification shall contain the following:

(1) A statement setting out the basis under 18 U.S.C. 2257A and this part under which the certifying entity and any sub-entities, if applicable, are permitted to avail themselves of this exemption, and basic evidence justifying that basis.

(2) The following statement: "I hereby certify that [name of entity] [and all sub-entities listed in this letter] regularly and in the normal course of business collect and maintain individually identifiable information regarding all performers employed by [name of entity]"; and

(3) If applicable because the visual depictions at issue were produced outside the United States, the statement that: "I hereby certify that the foreign producers of the visual depictions produced by [name of entity] either collect and maintain the records required by sections 2257 and 2257A of title 18 of the U.S. Code, or have certified to the Attorney General that they collect and maintain individually identifiable information regarding all performers, including minor performers, employed by that person, pursuant to tax, labor, and other laws, labor agreements, or otherwise pursuant to industry standards, where such information includes the name, address, and date of birth of the performer, in accordance with 28 CFR part 75; and [name of entity] has copies of those records or certifications." The producer may provide the following statement instead: "I hereby certify that with respect to foreign primary producers who do not either collect and maintain the records required by sections 2257 and 2257A of title 18 of the U.S. Code, or certify to the Attorney General that they collect and maintain individually identifiable information regarding all performers, including minor performers, whom they employ pursuant to tax, labor, or other laws, labor agreements, or otherwise pursuant to industry standards, where such information includes the names, addresses, and dates of birth of the performers, in accordance with 28 CFR part 75, [name of entity] has taken reasonable steps to confirm that the performers in any depictions that may potentially constitute simulated sexually explicit conduct or lascivious exhibition of the genitals or pubic area of any person were not minors at the time the depictions were originally produced." "Reasonable steps" for purposes of this statement may include, but are not limited to, a good-faith review of the visual depictions themselves or a good-faith reliance on representations or warranties from a foreign producer.

(d) *Entities covered by each certification.* A single certification may cover all or some subset of all entities owned by the entity making the certification. However, the names of all sub-entities

covered must be listed in such certification and must be cross-referenced to the matter for which the sub-entity served as the producer.

(e) *Timely submission of certification.* An initial certification is due June 16, 2009. Initial certifications of producers who begin production after December 18, 2008, but before June 16, 2009, are due on June 16, 2009. Initial certifications of producers who begin production after June 16, 2009 are due within 60 days of the start of production. A subsequent certification is required only if there are material changes in the information the producer certified in the initial certification; subsequent certifications are due within 60 days of the occurrence of the material change. In any case where a due date or last day of a time period falls on a Saturday, Sunday, or federal holiday, the due date or last day of a time period is considered to run until the next day that is not a Saturday, Sunday, or federal holiday.

[73 FR 77471, Dec. 18, 2008]

## PART 76—RULES OF PROCEDURE FOR ASSESSMENT OF CIVIL PENALTIES FOR POSSESSION OF CERTAIN CONTROLLED SUBSTANCES

Sec.

- 76.1 Purpose.
- 76.2 Definitions.
- 76.3 Basis for civil penalty.
- 76.4 Enforcement procedures.
- 76.5 Complaint.
- 76.6 Service and filing of documents.
- 76.7 Content of pleadings.
- 76.8 Time computations.
- 76.9 Responsive pleading—answer.
- 76.10 Motions and requests.
- 76.11 Notice of hearing.
- 76.12 Prehearing statements.
- 76.13 Parties to the hearing.
- 76.14 Separation of functions.
- 76.15 *Ex parte* communications.
- 76.16 Disqualification of a Judge.
- 76.17 Rights of parties.
- 76.18 Authority of the Judge.
- 76.19 Prehearing conferences.
- 76.20 Consent Order or settlement prior to hearing.
- 76.21 Discovery.
- 76.22 Exchange of witness lists, statements and exhibits.
- 76.23 Subpoenas.
- 76.24 Protective order.
- 76.25 Fees.

- 76.26 Sanctions.
- 76.27 The hearing and burden of proof.
- 76.28 Location of hearing.
- 76.29 Witnesses.
- 76.30 Evidence.
- 76.31 Standards of conduct.
- 76.32 Hearing room conduct.
- 76.33 Legal assistance.
- 76.34 Record of hearings.
- 76.35 Decision and Order of the Judge.
- 76.36 Administrative and judicial review.
- 76.37 Collection of civil penalties.
- 76.38 Deposit in the United States Treasury.
- 76.39 Compromise or settlement after Decision and Order of a Judge.
- 76.40 Records to be public.
- 76.41 Expungement of records.
- 76.42 Limitations.

AUTHORITY: 5 U.S.C. 301; 21 U.S.C. 844a, 875, 876; 28 U.S.C. 509, 510.; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

SOURCE: Order No. 1462–90, 56 FR 1089, Jan. 11, 1991, unless otherwise noted.

### § 76.1 Purpose.

This part implements section 6486 of the Anti-Drug Abuse Act of 1988 (the Act), 21 U.S.C. 844a. This part establishes procedures for imposing civil penalties against persons who knowingly possess a controlled substance for personal use that is listed in 21 CFR 1316.91(j)(2) in violation of 21 U.S.C. 844a and specifies the appeal rights of persons subject to a civil penalty pursuant to section 6486 of the Act.

### § 76.2 Definitions.

(a) *Act* means the Anti-Drug Abuse Act of 1988, Public Law 100–690.

(b) *Adjudicatory proceeding* means a judicial-type proceeding leading to the formulation of a final order.

(c) *Administrative Procedure Act* means those provisions of the Administrative Procedure Act, as codified, which are contained in 5 U.S.C. 551 through 559.

(d) *Attorney General* means the Attorney General of the United States or his or her designee.

(e) *Department* means the United States Department of Justice.

(f) *Judge* means an Administrative Law Judge appointed pursuant to the provisions of 5 U.S.C. 3105.

(g) *Penalty* means the amount described in 28 CFR 76.3 and includes the plural of that term.