

### § 75.3

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 performer; and according to the title, number, or other similar identifier of

### 28 CFR Ch. I (7-1-09 Edition)

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

## Department of Justice

## § 75.6

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 case an additional inspection or inspec-

tions 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: