

(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 certifi-

cation 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

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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.

(h) The term *Personal Use Amount* means possession of controlled substances in circumstances where there is no other evidence of an intent to dis-

tribute, or to facilitate the manufacturing, compounding, processing, delivering, importing or exporting of any controlled substance. Evidence of personal use amounts shall not include sweepings or other evidence of possession of amounts of a controlled substance for other than personal use. The following criteria shall be used to determine whether an amount of controlled substance in a particular case is in fact a personal use amount. The absence of any of the factors listed in paragraphs (h)(1) through (h)(5) of this section and the existence of the factor in paragraph (h)(6) of this section shall be relevant, although not necessarily conclusive, to establish that the possession was for personal use, and amounts in excess of those listed in paragraph (h)(6) of this section may be determined to be personal use amounts where circumstances indicate possession of the substance without an intent to distribute or to facilitate the manufacturing, compounding, processing, delivering, importing or exporting of the controlled substance.

(1) Evidence, such as drug scales, drug distribution paraphernalia, drug records, drug packaging material, method of drug packaging, drug "cutting" agents and other equipment, that indicates an intent to process, package or distribute a controlled substance;

(2) Other information indicating possession of a controlled substance with intent to distribute;

(3) The controlled substance is related to large amounts of cash or any amount of prerecorded government funds;

(4) The controlled substance is possessed under circumstances that indicate such a controlled substance is a sample intended for distribution in anticipation of a transaction involving large amounts, or is part of a larger delivery; or

(5) Statements by the possessor, or otherwise attributable to the possessor, including statements of co-conspirators, that indicate possession with intent to distribute.

(6) The amounts do not exceed the following:

(i) One gram of a mixture or substance containing a detectable amount of heroin;