

§ 75.7

28 CFR Ch. I (7–1–10 Edition)

(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

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 reissued 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

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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

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