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 com-
puter-manipulated image, digital
image, or picture shall contain the re-
quired statement on every page of a
Web site on which a visual depiction of
an actual human being engaged in ac-
tual or simulated sexually explicit con-
duct 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 Compli-
ance Statement.”
(e) For purpose of this section, a dig-
tal video disc (DVD) containing mul-
tiple 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 other-
wise mentioned in this section, the
statement is to be prominently dis-
played consistent with the manner of
display required for the aforemen-
tioned categories.

§ 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 exhibi-
tion of the genitals or pubic area of a
person or to a visual depiction of simu-
lated 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 pro-
duced, 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 Communica-
tions Commission acting in its capac-
ty to enforce 18 U.S.C. 1464 regarding
the broadcast of obscene, indecent, or
profane programming; and
(4) The producer of the visual depic-
tion certifies to the Attorney General
that he regularly and in the normal
course of business collects and main-
tains individually identifiable informa-
tion regarding all performers, includ-
ing 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 infor-
mation includes the name, address, and
date of birth of the performer. (A pro-
ducer 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 certifi-
cation shall take the form of a letter
addressed to the Attorney General
signed either by the chief executive of-
fer 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 execu-
tive officer, the senior manager respon-
sible for overseeing the entity’s activi-
ties.
(c) Content of certification. The certifi-
cation 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 per-
mitted to avail themselves of this ex-
emption, and basic evidence justifying
that basis.
(2) The following statement: “I here-
by certify that [name of entity] [and
all sub-entities listed in this letter]
regularly and in the normal course of
business collect and maintain individ-
ually identifiable information regard-
ing 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 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 performer, 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

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