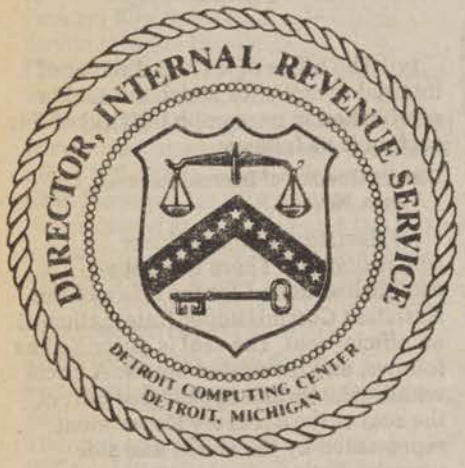
(6) *Director of Internal Revenue Computing Center.* There is hereby established in and for the office of the Director of the Internal Revenue Computing Center an official seal. The seal is described as follows, and illustrated below: A circle within which shall appear that part of the seal of the Treasury Department represented by the shield. Exterior to this circle and within a circumscribed circle in the form of a rope shall appear in the upper part the words "DIRECTOR, INTERNAL REVENUE SERVICE" and in the lower part "Detroit Computing Center Detroit, Michigan".



(7) *Director of Internal Revenue Compliance Center.* There is hereby established in and for the office of the Director of the Internal Revenue Compliance Center an official seal. The seal is described as follows, and illustrated below: A circle within which shall appear that part of the seal of the Treasury Department represented by the shield and side wreaths. Exterior to this circle and within a circumscribed circle in the form of a rope shall appear in the upper part the words "DIRECTOR, INTERNAL REVENUE COMPLIANCE CENTER" and in the lower part "Southwest Region Austin, Tex".



* * * * *

David G. Blattner,
Acting Commissioner of Internal Revenue.
Approved: March 10, 1992.
Fred T. Goldberg, Jr.,
Assistant Secretary of the Treasury.
[FR Doc. 92-9288 Filed 4-23-92; 8:45 am]
BILLING CODE 4830-01-M

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26 CFR Part 301

[T.D. 8415]

RIN 1545-AM45

Reimbursement to State and Local Law Enforcement Agencies

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance to State and local law enforcement agencies in applying for reimbursement of expenses incurred in an investigation where resulting information furnished by the agency to the Internal Revenue Service substantially contributes to the recovery of Federal taxes with respect to illegal drug or related money laundering activities. The applicable law was amended by the Anti-Drug Abuse Act of 1988.

EFFECTIVE DATE: These regulations are effective for information first provided to the Service by a State or local law enforcement agency after Federal 16, 1989.

FOR FURTHER INFORMATION CONTACT: Gail M. Winkler of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:IT&A:Br4) or telephone (202) 566-5985 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On May 16, 1989, the Federal Register published (54 FR 21053) temporary regulation 26 CFR 301.7624-1T, under section 7624 of the Internal Revenue Code. On January 24, 1992, the **Federal Register** published (57 FR 2839) correcting amendments to the temporary regulations. On May 16, 1989, the **Federal Register** also published (54 FR 21073) a notice of proposed rulemaking by cross-reference to the temporary regulations. No comments were received in response to the notice of proposed rulemaking. Because no public hearing was requested, none was held. These final regulations adopt the temporary regulations as corrected.

Explanation of Provisions

Section 7624 of the Code gives the Internal Revenue Service discretion of reimburse a State or local law enforcement agency for expenses incurred in an investigation where resulting information furnished by the agency to the Service substantially contributes to the recovery of Federal taxes with respect to illegal drug or related money laundering activities. The regulations provide that the reimbursement allowable under this provision is limited to 10 percent of the amount received for Federal taxes, including additions to tax, and civil penalties, but not interest or criminal fines. However, no reimbursement is allowable with respect to expenses that have been or will be reimbursed from other sources, such as a Federal or State forfeiture program. The regulations also provide that reimbursement will not be paid unless the amount of taxes recovered is at least $50,000. This section applies to State law enforcement agencies including the District of Columbia, and local law enforcement agencies within the states and the District of Columbia.

Whether or not information furnished by a State or local law enforcement agency substantially contributes to the recovery of taxes is necessarily a determination based on facts and circumstances that can be made by the Service only on a case-by-case basis. Nevertheless, the regulations explain the type of information that the Service will consider as having "substantially contributed" to the collection of additional Federal taxes with respect to illegal drug or related money laundering activities. These rules provide guidance to law enforcement agencies concerning

the types of information that the Service generally finds highly useful in developing and prosecuting a Federal tax case involving illegal drug or related money laundering activities.

Where information provided by a State or local law enforcement agency substantially contributes to the collection of at least $50,000 in additional taxes, additions to tax and civil penalties with respect to illegal drug or related money laundering activities, the Service may provide reimbursement for reasonable investigative expenses, not otherwise reimbursed, up to a maximum of 10 percent of the taxes recovered. A special account has been established for this purpose to receive and expend funds.

A State or local law enforcement agency furnishing information to the Service must use Form 211A to apply for reimbursement under this section. An application for reimbursement may be filed with the Service as soon as the agency has made a final determination as to the amount of the expenses incurred and the amount received or to be received from other sources. However, no application will be considered by the Service if filed later than 30 days after the Service has notified the agency of the amount of taxes recovered. If more than one agency files an application for reimbursement with respect to the taxes recovered, the Service will use discretion in allocating the amount of reimbursement to be paid to each agency, but in no event shall the aggregate of amounts paid by the Service exceed 10 percent of the sum of additional Federal taxes recovered.

Section 7809(d) of the Code provides that reimbursement under section 7624 must be paid out of the amounts recovered as a result of information furnished by the State or local law enforcement agency which substantially contributed to the recovery. Congress did not provide for any separate appropriation of Federal funds for this purpose. For this reason, the Service must insure against the possibility of having to refund to the taxpayer amounts collected after these amounts have already been paid to a State or local law enforcement agency as reimbursement. Accordingly, the regulations provide that no reimbursement will be paid before expiration of the period of limitations for filing a claim for refund by the taxpayer or the determination of the taxpayer's liability becomes final. In general, no refund is allowable unless a claim for refund is filed by a taxpayer within 3 years from the time the return is filed or 2 years from the time the tax is paid, whichever is later. However, in many instances this period for filing a claim for refund will be extended. For example, if a taxpayer enters into an agreement to extend the period of limitations on assessment of tax, the period of limitations on filing a claim for refund as extended for 6 months after expiration of the period of limitations on assessment. Thus, in most cases, the payment of reimbursement under section 7624 would be delayed for a minimum of two years after the information is provided to the Service (i.e., the minimum period within which a refund may be claimed) and in many cases the delay could be much longer. However, an agency that adequately indemnifies the Service against loss due to a refund to the taxpayer of Federal taxes collected may receive reimbursement at an earlier time.

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a final Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, prior to the Omnibus Budget Reconciliation Act of 1990, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Gail M. Winkler of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices in the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Disclosure of information, Employment taxes, Estate tax, Excise taxes, Filing requirements, Gift tax, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes.

Adoption of Temporary Regulations as Final Regulations

Accordingly, the temporary regulations § 301.7624–1T in title 26 of CFR are adopted as final regulations subject to the following amendments.

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority for part 301 is amended in part by removing the citation "Section 301.7624–1T also issued under 26 U.S.C. 7624." and continues to read in part as follows:

Authority: Sec. 7805; 68A Stat. 917; 26 U.S.C. 7605 * * * § 301.7624–1T [Redesignated as § 301.7624–1]

§ 301.7624–1T [Redesignated as § 301.7224–1]

Par. 2. Section 301.7624–1T is redesignated as § 301.7624–1, and the section heading is amended by removing the language "(temporary)".

David G. Blattner,
Chief Operations Officer.

Approved: April 7, 1992.

Fred T. Goldberg, Jr.,
Assistant Secretary of the Treasury.

[FR Doc. 92–9539 Filed 4–23–92; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 75

[Order No. 1586–92]

Child Protection Restoration and Penalties Enhancement Act of 1990

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: These regulations under part 75, title 28 of the Code of Federal Regulations implement the Attorney General's responsibility under the Child Protection and Obscenity Enforcement Act of 1988 (subtitle N of title VII of Public Law 100–690, codified at 18 U.S.C. 2257) and the Child Protection Restoration and Penalties Enhancement Act of 1990 (subtitle A of title III of Public Law 101–647, amending 18 U.S.C. 2257). These Acts contain minimal statutory standards, enforceable before the issuance of supplementary regulations, which require producers of matters containing one or more visual depictions of actual sexually explicit conduct, as defined in 18 U.S.C. 2256(2)(A)–(D), 2257(h)(1), made after November 1, 1990, to keep records of the actual, previous, and assumed names, and of the date of birth, of each performer portrayed in such visual

depictions. The final Attorney General regulations promulgate supplementary standards governing compliance. These standards impose additional record-keeping requirements on producers of matters containing one or more visual depictions of actual sexually explicit conduct made after the effective date of these regulations, including that such producers maintain at least one recent and recognizable photo identification document in order to enhance the reliability of the identifications contained in these records. The regulations also specify the form and manner of affixation of a required statement describing the location of these records. This statement must be attached to all matters covered by the statute that are produced, manufactured, published, duplicated, reproduced, or reissued after the effective date of these regulations.

EFFECTIVE DATE: These regulations become effective May 26, 1992.

FOR FURTHER INFORMATION CONTACT: Patrick Trueman at U.S. Department of Justice, Child Exploitation and Obscenity Section, 1001 G St. NW., room 3131, Washington, DC 20530, (202) 514–5780. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On February 26, 1991, the Department of Justice agreed not to seek enforcement of the Child Protection Restoration and Penalties Enhancement Act of 1990 (subtitle A of title III of Public Law 101–647, amending 18 U.S.C. 2257) until regulations implementing the Act become effective. See Stipulation, *American Library Ass'n* versus *Thornburgh*, C.A. No. 91–0394–SSS (D.D.C. Feb. 26, 1991). This agreement not to enforce the Act extends to visual depictions of actual sexually explicit conduct made prior to the date upon which the implementing regulations become effective.

On July 1, 1991, the Attorney General published proposed regulations implementing the Act and invited public comment on the proposed regulations. 56 FR 29914 (July 1, 1991). In response six comments were received. The substance of the comments and the Attorney General's response are discussed below.

Discussion of Comments

Photo Marketing Association International ("PM") comments that compliance with this rule would be extremely difficult if photo processors are covered under the Act and this rule because they technically "produce" visual depictions of actual sexually explicit conduct. According to PM, photo processors often do not make visual inspections of slide or movie film. Further, even if photo processors do make prints, their visual inspection of these prints is cursory and there is no time to examine the prints' contents. Thus, there is often no way to know whether the material is sexually explicit.

Moreover, PM contends that a photo processor is not in the position to acquire the information required by the regulations. Even though the processor may have "produced" the images, he does not have direct contact with the person depicted in the picture. PM also questions how a photo processor logistically can attach a "statement" to a single photograph, slide or negative, if those matters come within the statutory or regulatory definition of "film". Finally, PM asks what should be done with developed sexually explicit film about which the photo processor cannot obtain the required information from the customer who submits the film for processing.

The Attorney General has responded to PM's concerns by fashioning a definition of the word "producer" which makes clear that an independent photo processor is not a "producer" within the meaning of the regulations. Section 75.1(c), *infra*.

Motion Picture Association of America, Inc. ("MPAA") comments that the requirement in § 75.8 that a statement regarding the location of required records that is affixed to a film be capable of being read by the average viewer is unduly intrusive and without foundation in the statute. MPAA contends that this requirement would intrude on the aesthetic prerogative of the producer. Moreover, MPAA argues, federal law enforcement officials can examine the film or tape frame by frame to discern the contents of the statement. MPAA attaches a sample frame demonstrating how the statement might appear in a fashion that is not visible to the general public but is still reviewable by federal law enforcement officials. The statute requires the statement to be affixed in such a manner or form as the Attorney General shall prescribe. (18 U.S.C. 2257(e)(1).) The Attorney General must render a reasonable interpretation of this requirement. Given that many films and videotapes already contain opening and closing credits, and, in some cases, FBI warnings, it is not unreasonable to require a producer to add one more statement.

MPAA next comments that the statute and proposed regulations would prohibit domestic distribution of many foreign-made films and suggests that the regulations either exclude works made outside the United States or be amended to allow distribution within the United States of such works as long as the distributor makes reasonable efforts to compile and maintain the records as to the age and identity of the performers depicted in the work. The Attorney General notes that Congress specifically included foreign films under 18 U.S.C. 2257(f)(4), and that distributors are expressly liable under that provision if they sell a foreign produced film that does not contain the required statement as to the location of the records. The regulations would be contrary to the explicit command of the statute if they excluded persons otherwise covered under section 2257(f)(4). In addition, MPAA's suggestion that distributors create and maintain records imposes an even more stringent burden on distributors than the statute. Section 2257(g)(3) states that mere distributors are not producers who must create and maintain records under the requirements of section 2257(a).

MPAA also states that the definition of the word *producer* in § 75.1(c) goes far beyond the statute's intended coverage, and, literally construed, could extend to commercial lenders or limited partners who finance production of a film. According to MPAA, hundreds of limited partners would be required to create and maintain records, and affix a statement to the matter regarding the location of the records. MPAA suggests that the regulations do no more than define a "producer" as one who "produces" a work, as that term is defined in the amended statute.

The Attorney General agrees that the proposed definition of the word *producer* in § 75.1(c) unintentionally covers too many entities that potentially could be involved in production. Consequently, this final rule narrows the meaning of the word "producer" to include any person who actually films, videotapes, or photographs the visual depiction of actual sexually explicit conduct (a "primary producer") and any person who produces, assembles, manufactures, publishes, duplicates, reproduces or reissues a book, magazine, periodical, film, videotape or other matter intended for commercial distribution that contains the visual depiction of actual sexually explicit conduct (a "secondary producer"). The final rule specifies that "producer" does not include photo processors, mere distributors, and any person engaged in any activity, other than those listed above, concerning a visual depiction of actual sexually explicit conduct, if such activity does not involve hiring, contracting for, managing, or otherwise arranging for the participation of the depicted performers.

MPAA further criticizes the requirement in § 75.6(c) that the information contained in the statement regarding the location of the records should be accurate as of the time the material is sold, distributed, redistributed, or rereleased. MPAA contends that this requirement unduly burdens individuals by obligating them to update information contained in the statement every time each copy of the work is sold or released. MPAA suggests that the information contained in the statement should be accurate when originally affixed to the work. The MPAA asserts that if information contained in the statement becomes outdated, for instance if the principal place of business changes or if a new custodian is designated, skilled federal investigators would have no difficulty updating the information to locate the new place of business or the new custodian.

The Attorney General disagrees with MPAA's suggestion that the producer should not be required to update the statement regarding the location of the records at the time the producer redistributes or rereleases materials. Section 2257(h)(3) includes, within the definition of a producer, one who reissues or reproduces covered matter. Section 2257(e)(1) requires a producer to affix a statement to covered matter describing where records "may be located." A statement that is outdated at the time that it is affixed does not indicate where an investigator, acting on the information contained in that statement, may locate records. Consequently, an outdated statement affixed to reissued or reproduced matter does not satisfy the statutory standard. Section 75.6(c) merely reflects that standard. It is worthy of note that § 75.6(c) does not require a producer to update the actual records concerning the performer, which must be accurate only as of the actual filming, videotaping, or photographing of the depiction of actual sexually explicit conduct.

MPAA finally contends that § 75.5 should require law enforcement officials to notify the producer before inspecting his records. According to MPAA, unannounced visits by federal law enforcement officials would disrupt a producer's operations and notice would not provide producers with an opportunity to fabricate necessary documents. Section 75.5 incorporates the statutory standard set forth in 18 U.S.C. 2257(c), which requires producers to make such records available to the Attorney General for inspection at all reasonable times. American Library Association, the Freedom to Read Foundation, the American Booksellers Foundation for Free Expression, The American Society of Magazine Photographers, the Council for Periodical Distributors Associations, the International Periodical Distributors Association, the National Association of Artists' Organizations, the National Campaign for Freedom of Expression, the Independent Video Retailers Association, Penthouse International, Ltd., Hank Londoner Photography, Inc., and Suze Randall Photography ("ALA commenters") jointly filed comments. First, they contend that the definition of "producer" in § 75.1(c) is inconsistent with the statutory definition of "produces" in 18 U.S.C. 2257(h)(3). Section 2257(h)(3) provides:

> The term "produces" means to produce, manufacture, or publish any book, magazine, periodical, film, video tape or other similar matter and includes the duplication, reproduction, or reissuing of any such matter, but does not include mere distribution or any other activity which does not involve hiring, contracting for managing, or otherwise arranging for the participation of the performers depicted.

The ALA commenters read the clause beginning with the phrase "or any other activity" as applying to all of section 2257(h)(3) and, consequently, contend that this clause excludes from the definition of "produces" "any activity which does not involve hiring, contracting for managing, or otherwise arranging for the participation of the performers depicted." In their view, § 75.1 impermissibly imposes recordkeeping obligations on individuals or companies that do not have direct contact with performers.

Like PM and MPAA, the ALA commenters also note that § 75.1(c) could be read to impose recordkeeping obligations on every person or company holding stock in a publishing company or a photography or film studio, and on photo-finishing laboratories, printers, and video duplicating companies. This would result in the creation of many duplicate sets of records and would "impose substantial burdens on persons who merely support expression financially but do not control artistic content."

As previously noted, the final regulations address the second of the ALA commenters' objections by narrowing the definition of producer in § 75.1(c). With regard to the first objection, however, the Attorney General rejects the ALA commenters' suggestion that the term "producer" should be limited to those involved in "hiring, contracting for, managing, or otherwise arranging for the participation of the depicted performers." Were section 2257(h)(3) interpreted that way, the clause "includ[ing] the duplication, reproduction, or reissuing of any such matter" would be read out of the statute, because such activities would not necessarily involve the hiring, contracting for, or managing of performers. Yet the statute clearly demonstrates Congress' intention to include such activities. Therefore, the activities of "duplication, reproduction, [and] reissuing" fall within the statutory definition of producing, regardless of their relationship to the participation of the performers, but mere distribution does not, nor do other activities unrelated to the hiring, contracting for, or managing of the performers. Section 75.1(c) of the final rule has been amended to incorporate this interpretation. As noted above, in response to PM's comments § 75.1(c)(4)(i) expressly includes photo processing among those "other activities" not included within the coverage of the statute or the regulations.

The ALA commenters also note that the regulations do not clarify the scope of the term "actual sexually explicit conduct." They contend that photographers and publishers fear that even though the images merely suggest that sexual activity is taking place, they may be required to keep records if actual sexual activity took place off camera. The Attorney General believes that the definition of "actual sexually explicit conduct" in 18 U.S.C. 2256 and case law interpreting that definition give adequate notice of the conduct covered by the statute.

The ALA commenters also contend that § 75.6 of the proposed regulations is unclear as to whether the location statement must contain every address where records are kept for each image that appears in the publication. If this were so, they contend, the "disclosure statement will in some cases exceed the length of the work itself." The final rule addresses this concern by permitting the "secondary" producer to publish its own address if it is the repository of photocopies of the primary producer's records. See §§ 75.2(b), 75.6(a)(3). In this manner, only one address need be printed.

The ALA commenters also read the proposed rule to require secondary producers to recreate the records each time an image is republished or reproduced, apparently by recontacting the model and by determining that the picture is recent and recognizable. As noted above, the actual records regarding the performers must be current only as of the date on which the

visual depiction was made, while the location statement must be current at the time of republication or reproduction.

These commenters believe that these regulations will cripple U.S. distribution of foreign made images and will impose an extreme burden upon small businesses. In their view, the Act would require photographers who work at home to print their name on all publications of their prints and to keep voluminous records, including records of every name ever used by the performers, for which the photographers will not have adequate storage space. This final rule does not impose any burden on foreign film distributors, or on small businesses with regard to performer's names, beyond the burden required by 18 U.S.C. 2257. As amended, this rule does not require photographers who work at home to put their name on publications already containing the name of a secondary producer when that secondary producer complies with § 75.2(b).

As the ALA commenters point out, the proposed regulations do not specify the length of time for which producers must maintain copies of the records. The Attorney General agrees that the final rule should specify such a time period. Consequently, § 75.4 has been amended to specify that the required records are to be kept as long as the producer is in business. If an organization is dissolved, the producer's custodian of records must keep the records for five years after dissolution.

Finally, the ALA commenters object to the description of the stipulation reached between the ALA, et al., and the U.S. Justice Department as the result of a lawsuit challenging the recordkeeping statute. They suggest that the "Supplementary Information" make clear that the Justice Department agreed not to enforce the Act until regulations become effective and not to seek enforcement with respect to visual depictions made prior to the effective date of the regulations. The Attorney General believes that the Act and the stipulation are clear, and that the existing language in the "Supplementary Information" accurately summarizes the stipulation's terms. For reference, a citation to the stipulation has been added.

The Association of American Publishers, Inc. joins the comments submitted by ALA commenters and expresses its concerns over the "potential impact that the present recordkeeping provisions, and the proposed regulations that would implement them, would have on responsible book publishers and those who distribute their works."

Morality in Media, Inc. ("MIM") argues that the proposed definition of producer in § 75.1(c) is too narrow because the plain language of 18 U.S.C. 2257(h)(3) is not limited to anyone who "provides the capital." Instead, section 2257 would arguably "encompass a bank that made a loan to the producer of film or to the publisher of a book and would also arguably encompass a 'small' stockholder of a company that manufactures films or books." Moreover, proposed § 75.1(c) "would also exempt from the statute's coverage the person who actually produces a film or publishes a magazine or manufactures so-called 'adult' materials but obtains the 'capital' from outside sources" and "a contract printer or person that contracts to duplicate videos for another person—because in both cases the 'capital' comes from another person."

MIM suggests that the definition of producer in § 75.1(c) parallel the dictionary definition of production, namely, the act of "making or manufacturing" or "to causing something to be, or to happen." Under MIM's interpretation, producers would include:

(1) "A person or group of persons, including an organized criminal enterprise, which arranges for the making of a 'hard core' pornographic film or the publication of a 'hard core' pornographic magazine;" (2) the "person or persons responsible for making a film;" (3) a "corporation that manufactures 'adult' videos, magazines or paperback books for mass distribution;" (4) a "publisher of 'hard core' pornographic magazines;" (5) a "contract printer that reproduces copies of 'hard core' pornographic magazines for a publisher;" and (6) a "subcontractor which duplicates a 'hard core' video for a corporation that is reissuing it." The Attorney General believes that the revised definition of "producer" in § 75.1(c) of the final rule accurately reflects Congress' definition of the term "produces" in 18 U.S.C. 2257(h)(3).

National Family Legal Foundation, American Family Association, Athletes and Business for Kids, Focus on the Family, National Christian Association, National Coalition Against Pornography, Religious Alliance Against Pornography ("National Family") suggest that the regulations should specify that they apply only to persons involved in commercial sales or transfers of material, and that the distributors referred to by 18 U.S.C. 2257(f)(4) do not include libraries, schools, and universities. Because the Attorney General interprets section 2257(f) of the statute, which prohibits "any person knowingly to sell or otherwise transfer, or offer for sale or transfer, any book, magazine, periodical, film, video, or other matter (that does not contain a required statement)", to apply only to commercial transfers, § 75.1(d) of the final rule has been amended to make clear that distributors do not include libraries or lending institutions.

National Family also suggests that the regulations should include a provision "which would allow a producer to provide, in written form, a statement to third parties that all depictions within the matter (a) were produced prior to the effective date of the regulations, and/or (b) that the matter does not depict actual sexually explicit conduct; and/or (c) that the depictions are merely reproductions of depictions which were produced prior to the effective date of the regulations or were simulated not actual conduct." Any person who subsequently sold a work containing such a statement would be exempt from prosecution for sale of material that did not bear the statement required under the Act and its implementing regulations. In this manner, a distributor would not "have to determine whether the matter was produced before or after the effective date, and/or whether the depiction was 'actual versus simulated' sexual activity." However, a producer who provided a false statement that the material was produced before the effective date of the regulations, or that the depiction is of simulated, sexually explicit conduct, would be liable for a violation of the Act. The Attorney General agrees that such an exemption would enable producers to assure others in the chain of distribution that materials sold were not covered by the Act. Such an exemption has been included in § 75.7 of the final rule.

National Family also proffers three technical changes. First, it recommends that the word "legible" be inserted in § 75.2(b) of the regulations before the word "copy" so that the regulation makes clear that the photocopy must be readable. Section 75.2(a) of the final rule incorporates this suggestion. Second, it recommends that, because many hard-core and child pornographic works do not identify the performers by name, required records should be kept both according to name and according to title, number, or other similar identifier of each book, magazine, periodical, film, videotape or other matter to ensure efficient location of performers' records. This suggestion is reflected in § 75.3 of

the final rule. Finally, National Family recommends that since many producers of hard-core pornography commonly "create separate entities for each production and then 'go out of business'," the final rule should specify that if the producer is a corporation, the corporate record keeper should have a personal duty to maintain the records if the corporation is dissolved. The regulations should also specify that the records be maintained for a specified number of years after dissolution of the business. Section 75.4 incorporates this modification.

Economic Assessment and Certification

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. It is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6 of E.O. 12612. The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. (OMB Clearance No. 1105–0050.)

List of Subjects in 28 CFR Part 75

Crime, Juvenile delinquency, Organization and functions (Government agencies).

By virtue of the authority vested in me by law, including 28 U.S.C. 509, 510 and 18 U.S.C. 2257(g), title 28, chapter I of the Code of Federal Regulations is amended by adding a new part 75 to read as follows:

PART 75—CHILD PROTECTION RESTORATION AND PENALTIES ENHANCEMENT ACT OF 1990; RECORD-KEEPING 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.

Authority: 18 U.S.C. 2257.

§ 75.1 Definitions.

(a) Terms used in this Part shall have the meanings set forth in 18 U.S.C. 2257.

(b) *Picture identification card* shall mean a document issued by a government entity or by a private entity, such as a school or a private employer, that bears the photograph and the name of the individual identified. A picture identification card may be a passport, driver's license, work identification card, school identification card, selective service card, or identification card issued by a state.

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

(1) A *primary producer* is any person who actually films, videotapes, or photographs a visual depiction of actual sexually explicit conduct.

(2) A *secondary producer* is any person who produces, assembles, manufactures, publishes, duplicates, reproduces, or reissues a book, magazine, periodical, film, videotape, or other matter intended for commercial distribution that contains a visual depiction of actual sexually explicit conduct.

(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 sexually explicit conduct are limited to the following:

(i) Photo processing;

(ii) Distribution; or

(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.

(d) *Sell, distribute, redistribute,* and *rerelease* refer to commercial distribution of a book, magazine, periodical, film, videotape, or other matter that contains a visual depiction of actual sexually explicit conduct, and does not refer to noncommercial distribution of the such matter, including transfers conducted by lending libraries.

(e) *Copy,* when used in reference to an identification document or a picture identification card, means a photocopy or a photograph.

§ 75.2 Maintenance of records.

(a) Any producer of any book, magazine, periodical, film, videotape, or other matter that contains one or more visual depictions of actual sexually explicit conduct made after November 1, 1990 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 an identification document, as defined by 18 U.S.C. 1028(d). For any performer portrayed in such a depiction made after May 26, 1992, the records shall also include a legible copy of the identification document examined and, if that document does not contain a recent and recognizable picture of the performer, a legible copy of a picture identification card.

(2) Any name, other than each 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 such a depiction made after May 26, 1992, such names shall be indexed by the title or identifying number of the book, magazine, film, videotape, or other matter.

(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.

(c) The information contained in the records required to be created and maintained by this part need be current only as of the time the primary producer actually films, videotapes, or photographs the visual depiction of actual sexually explicit conduct. If the producer subsequently produces an additional book, magazine, film, videotape or other matter that contains one or more visual depictions of actual sexually explicit conduct made by a performer for whom he maintains records as required by this part, the producer may add the additional title and/or identifying number and the names of the performer to the existing records maintained pursuant to § 75.2(a)(2).

§ 75.3 Categorization of records.

Records required to be maintained under this part shall be categorized 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 each book, magazine, periodical, film, videotape, or other matter. 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. The business address shall refer to a street address and not to a post office box number. Such records shall be maintained as long as the producer remains in business. 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 or other matter 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. If the organization is dissolved, the individual who was responsible for maintaining the records on behalf of the organization, as described in § 75.6(b), shall continue to maintain the records for a period of five years after dissolution.

§ 75.5 Inspection of records.

Any producer required by this part to maintain records shall make such records available to the Attorney General or his delegee for inspection at all reasonable times.

§ 75.6 Statement describing location of books and records.

Any producer of any book, magazine, periodical, film, videotape, or other matter that contains one or more visual depictions of actual sexual explicit conduct made after November 1, 1990, and produced, manufactured, published, duplicated, reproduced, or reissued on or after May 26, 1992 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, or other matter to affix the statement.

(a) Every statement shall contain:

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

(2) The date of production, manufacture, publication, duplication, reproduction, or reissuance of the matter; and,

(3) A street address at which the records required by this part may be made available. The street address may be an address specified by the primary producer or, if the secondary producer satisfies the requirements of § 75.2(b), the address of the secondary producer.

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

(c) The information contained in the statement must be accurate as of the date on which the book, magazine, periodical, film, videotape, or other matter is sold, distributed, redistributed, or rereleased.

§ 75.7 Exemption statement.

(a) Any producer of any book, magazine, periodical, film, videotape, 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) and of this part if:

(1) The matter contains only visual depictions of actual sexually explicit conduct made before November 1, 1990, or is produced, manufactured, published, duplicated, reproduced, or reissued before May 26, 1992;

(2) The matter contains only visual depictions of simulated sexually explicit conduct; or,

(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) and of this part.

§ 75.8 Location of the statement.

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. 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. 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. 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.

Dated: April 14, 1992.

William P. Barr,

Attorney General.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AE44

Veterans Benefits; Veterans Education and Employment Amendments of 1989 and the Montgomery GI Bill—Active Duty

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Veterans Education and Employment Amendments of 1989 contain several provisions which affect the Montgomery GI Bill—Active Duty. These include establishing flight training under this GI Bill; amendments to the work-study program; changes in the method for determining the end of a veteran's eligibility period; and the elimination of absence accounting. These amended regulations will acquaint the public with the way in which the Department of Veterans Affairs (VA) intends to implement these provisions of law.

EFFECTIVE DATE: These amended regulations are effective retroactively on the same date as the provisions of law they implement. Consequently, the amendments to § 21.7145 are retroactively effective on May 1, 1990. The amendments to §§ 21.7020(b)(25), 21.7076, 21.7120, 21.7135(e), 21.7220 and 21.7222 are retroactively effective on September 30, 1990. The amendments to all other amended regulations included here are retroactively effective on December 18, 1989.

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