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a sufficient duration and of a sufficient size to be capable of being read by the average viewer.

§ 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) and of this part if:

(1) The matter contains only visual depictions of actual sexually explicit conduct made before July 3, 1995, or is produced, manufactured, published, duplicated, reproduced, or reissued before July 3, 1995;

(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.

(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 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.

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(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 its homepage, any known major entry points, or principal URL (including the principal URL of a subdomain), or in a separate window that opens upon the viewer's clicking a hypertext link that states, "18 U.S.C. 2257 Record-Keeping Requirements Compliance Statement."

(e) 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.

PART 76—RULES OF PROCEDURE FOR ASSESSMENT OF CIVIL PENALTIES FOR POSSESSION OF CERTAIN CONTROLLED SUBSTANCES

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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 distribute, or to facilitate the manufac-

turing, 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;