use. Operators should maintain training in SCBAs.

(4) Procedural controls to maintain a low leakage boundary, such as preventive maintenance/routine inspection of door seals and dampers should be implemented.

(5) Procedures should be developed to ensure control room purging is considered when the outside concentration is less than the inside concentration.

(6) Existing emergency filtration systems should be maintained to practical performance criteria.

The petitioner also states that current TS for system performance would be eliminated and that the administrative portion of the TS could include a requirement to have a Control Room Habitability Program. The petitioner believes that because of the low public risk significance of being outside design guidelines in a Control Room Habitability Program, a plant shutdown would not be required if it is outside of the guidelines. Rather, the petitioner believes that the program could specify that timely actions should be taken to return the plant within the guidelines. If not complete within 30 days, the petitioner suggests that a special report would be sent to the NRC with a justification for continued operation and a proposed schedule for meeting the guidelines.

The petitioner states that removing the specific dose criteria would not eliminate the need to perform quantitative analyses as required to demonstrate the acceptability for certain conditions. The petitioner also states that although the current regulation has no specific quantitative limits for toxic gases, the guidelines require quantitative analyses for toxic gas habitability assessments under certain conditions. The petitioner suggests that as an alternative to total removal of dose guidelines from the regulations, most of his concerns could be resolved if the dose criteria were based solely on the whole body dose from noble gases that he believes is the only possible dose impact that may result in control room evacuation. The petitioner suggests, as another option, that most of his concerns would be resolved if credit for SCBAs and/or KI was allowed in the analysis of the dose from iodine and particulates. The petitioner also proposes that the TS be revised to eliminate shutdown requirements for failure to meet control room habitability requirements.

Dated at Rockville, Maryland, this 6th day of July 2007.

For the Nuclear Regulatory Commission.

J. Samuel Walker,

Acting Secretary of the Commission.

[FR Doc. E7–13539 Filed 7–11–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–147171–05]

RIN 1545–BF34

Deductions for Entertainment Use of Business Aircraft; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to notice of proposed rulemaking that was published in the **Federal Register** on Friday, June 15, 2007 (72 FR 33169) relating to the use of business aircraft for entertainment.

FOR FURTHER INFORMATION CONTACT: Michael A. Nixon at (202) 622–4930 or Lynne A. Camillo at (202) 622–6040 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–147171–05) that is the subject of this correction is under section 274(e) of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–147171–05) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–147171–05) that was the subject of FR Doc. E7–11445 is corrected as follows:

§ 1.274–10 [Corrected]

On page 33176, § 1.274–10(e)(1), column 2, lines 2 and 3 of the fourth full paragraph of the column, the language ''General rule. Except as provided in paragraph (f)(4) of this section, for '' is corrected to read ''General rule. For''.

Lanita Van Dyke,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E7–13498 Filed 7–11–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 75

[Docket No. CRM 104; AG Order No. 2888–2007]

RIN 1105–AB18

Revised Regulations for Records Relating to Visual Depictions of Sexually Explicit Conduct

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the record-keeping, labeling, and inspection requirements to account for changes in the underlying statute made by Congress in enacting the Adam Walsh Child Protection and Safety Act of 2006.

DATES: Written comments must be received by September 10, 2007.

ADDRESSES: Written comments may be submitted to: Andrew Oosterbaan, Chief, Child Exploitation and Obscenity Section, Criminal Division, United States Department of Justice, Washington, DC 20530; Attn: ''Docket No. CRM 104.''

Comments may be submitted electronically to: *Admin.ceos@usdoj.gov* or to *www.regulations.gov* by using the electronic comment form provided on that site. Comments submitted electronically must include Docket No. CRM 104 in the subject box. You may also view an electronic version of this rule at the *www.regulations.gov site.*

Facsimile comments may be submitted to: (202) 514–1793. This is not a toll-free number. Comments submitted by facsimile must include Docket No. CRM 104 on the cover sheet.

FOR FURTHER INFORMATION CONTACT: Andrew Oosterbaan, Chief, Child Exploitation and Obscenity Section, Criminal Division, United States Department of Justice, Washington, DC 20530; (202) 514–5780. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Child Protection and Obscenity Enforcement Act of 1988, Public Law 100–690, codified at 18 U.S.C. 2257, imposes certain name- and age-verification, record-keeping, and labeling requirements on producers of visual depictions of actual human beings engaged in actual sexually explicit conduct. Specifically, section 2257 requires producers of such material to ''ascertain, by examination of an identification document containing such information, the performer's name and date of birth,'' to ''ascertain any name, other than the performer's present and correct name, ever used by

the performer including maiden name, alias, nickname, stage, or professional name,'' and to record and maintain this information. 18 U.S.C. 2257(b). Violations of these record-keeping requirements are criminal offenses punishable by imprisonment for not more than five years for a first offense and not more than 10 years for subsequent offenses. *See id.* 2257(i). Any matter containing such visual depictions must be labeled with a statement indicating where the records are located, and those records are subject to inspection by the government. *See id.* 2257(c), (e). These provisions supplement the federal statutory provisions criminalizing the production and distribution of materials visually depicting minors engaged in sexually explicit conduct. *See id.* 2251, 2252.

The regulations in 28 CFR part 75 implement section 2257. On May 24, 2005, the Department of Justice (''the Department'') published a final rule that updated those regulations to account for changes in technology, particularly the Internet, and to implement the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003, Public Law 108–21. *See* 70 FR 29607 (May 24, 2005).

On July 27, 2006, President George W. Bush signed into law the Adam Walsh Child Safety and Protection Act, Public Law 109–248 (''the Act''). As described in more detail below, the Act made a number of changes to section 2257. This proposed rule amends the regulations in part 75 to comport with these statutory changes.

Need for the Rule

In publishing the May 24, 2005, regulations, the Department explained the urgency of protecting children against sexual exploitation and, consequently, the need for more specific and clear regulations detailing the records and inspection process for sexually explicit materials to ensure the accurate identity and age of performers.

The identity of every performer is critical to determining and ensuring that no performer is a minor. The key congressional concern, evidenced by the child exploitation statutory scheme, is that all such performers verifiably not be minors, *i.e.*, not be younger than 18. *See* 18 U.S.C. 2256(1), 2257(b)(1). Congress has recognized that minors warrant special concern in this area. Children are incapable of giving voluntary and knowing consent to perform, or to enter into contracts to perform, in visual depictions of sexually explicit conduct. In addition, children often are involuntarily forced to engage in sexually explicit conduct. For these reasons, visual depictions of sexually explicit conduct that involve persons under the age of 18 constitute child pornography. *See id.* 2256(8).

The current regulations and this revised proposed rule provide greater details for the record-keeping and inspection process in order to ensure that minors are not exploited in visual depictions of actual sexually explicit conduct. Neither the current regulations nor this revised proposed rule restrict in any way the content of the depictions themselves. Instead, the rules clarify the identity verification, record-keeping, and labeling requirements pertaining to the depictions.

By requiring producers to ascertain the age of performers in their depictions, and maintain records evidencing such compliance, the statute helps to ensure that producers will not exploit minors, either through carelessness, recklessness, or deliberate indifference. As for those who intentionally produce material depicting minors engaged in sexually explicit conduct, the statute and regulations either require them to maintain records of their crimes or provide an additional basis for prosecuting such individuals besides the applicable child-exploitation statutes. In addition, by confirming that the statute and regulations apply to ''secondary producers,'' the revised proposed rule will make it more difficult for the purveyors of such material to access the market. As the U.S. Court of Appeals for the DC Circuit explained in partially upholding the constitutionality of an earlier version of the regulations, one of the reasons for the regulations is ''to deprive child pornographers of access to commercial markets by requiring secondary producers to inspect (and keep a record of) the primary producers' proof that the persons depicted were adults at the time they were photographed or videotaped.'' *American Library Ass'n* v. *Reno,* 33 F.3d 78, 86 (DC Cir. 1994).

The proposed revision of the existing regulations also reflect several significant changes to section 2257 made by the Act.

First, the Act corrected an anomaly in the definition of ''sexually explicit conduct'' to which section 2257's requirements apply. Prior to the enactment of the Act, section 2257 referenced the definition of ''sexually explicit conduct'' for purposes of Chapter 110 of the U.S. Code in section 2256(2)(A) and listed four of the five categories of conduct included in that section. Section 2257 did not include ''lascivious exhibition of the genitals or pubic area of a person.'' 18 U.S.C. 2256(2)(A)(v). The Act revised section 2257 to include that category along with the others. *See* Adam Walsh Child Safety and Protection Act, Public Law 109–248, section 502(a)(4). Because part 75 defines ''sexually explicit conduct'' by referencing that term in section 2256(2)(A), part 75 will apply to depictions of the ''lascivious exhibition of the genitals or pubic area of a person.''

The proposed rule reflects this change by adding to the definitional section of the regulations at § 75.1(n). Although proposed part 75 applies to the ''lascivious exhibition of the genitals or pubic area of a person,'' it does not define this term beyond the language of section 2256(2)(A). Case law provides guidance as to the types of depictions that federal courts have considered as lascivious exhibition of the genitals or pubic area (hereinafter, ''lascivious exhibition''), and the Department will rely on such precedent in the context of section 2257 investigations and prosecutions.

The leading case is *United States* v. *Dost,* 636 F. Supp. 828 (S.D. Cal. 1986), *aff'd sub nom. United States* v. *Weigand,* 812 F.2d 1239 (9th Cir. 1987), which provides a list of factors for determining whether a visual depiction constitutes lascivious exhibition:

(1) Whether the focal point of the visual depiction is on the child's genitalia or pubic area;

(2) Whether the setting of the visual depiction is sexually suggestive, *i.e.*, in a place or pose generally associated with sexual activity;

(3) Whether the child is depicted in an unnatural pose, or in inappropriate attire, considering the age of the child;

(4) Whether the child is fully or partially clothed, or nude;

(5) Whether the visual depiction suggests sexual coyness or a willingness to engage in sexual activity;

(6) Whether the visual depiction is intended or designed to elicit a sexual response in the viewer.

Dost, 636 F. Supp. at 832. Several courts of appeals have relied upon the *Dost* factors. *See, e.g., United States* v. *Knox,* 32 F.3d 733 (3d Cir. 1994); *United States* v. *Grimes,* 244 F. 3d 375 (5th Cir. 2001); *United States* v. *Wolf,* 890 F.2d 241 (10th Cir. 1989).

It should be noted that, although these factors have been used to determine whether visual depictions of children constituted lascivious exhibition for purposes of criminal prosecution for violations of sections 2251, 2252, and 2252A of title 18, only the third factor is necessarily dependent on the age of the person depicted. The other factors provide guidance as to the types of

depictions that would constitute lascivious exhibition for purposes of section 2257 and part 75, as well, even though those sections apply to any performers regardless of age.

The applicability of part 75 to lascivious exhibition is prospective from the effective date of the Act. The rule therefore applies only to depictions whose original production date is on or after July 27, 2006. That is, records are not required to be maintained either by a primary producer or by a secondary producer for a visual depiction of lascivious exhibition, the original production date of which was prior to July 27, 2006. In the case of a secondary producer, this means that even if the secondary producer ''produces'' (as defined in the regulation) such a depiction on or after July 27, 2006, he need not maintain records if the original production date of the depiction is prior to that date.

Along with adding the requirement that producers of lascivious exhibition maintain records under section 2257, the Act created a new section of the Federal criminal code, 18 U.S.C. 2257A. See Adam Walsh Child Safety and Protection Act, Public Law 109–248, section 503. Section 2257A requires that producers of visual depictions of simulated sexually explicit conduct maintain records documenting that performers in those depictions not be minors. It thus brings the record-keeping requirements in line with the definition of sexually explicit conduct in section 2256(2)(A), which includes both actual and simulated conduct. *See* 18 U.S.C. 2256(2)(A). The Department is preparing a separate rule to implement this section.

In section 503, the Act also created an exemption from the record-keeping requirements of section 2257, to the extent it applies to lascivious exhibition, and of section 2257A. One part of this exemption states that section 2257 (to the extent it applies to lascivious exhibition) and section 2257A do not apply to matter that is (i) Intended for commercial distribution, (ii) is created as a part of a commercial enterprise by a person who certifies to the Attorney General that he regularly and in the normal course of business collects and maintains individually identifiable name and age information regarding all performers for purposes such as Federal and State tax, labor, and other laws, and (iii) is not produced, marketed, or otherwise made available in circumstances such that an ordinary person would conclude that it is child pornography. *See* 18 U.S.C. 2257A(h)(1)(A). The other part of this exemption states that section 2257 (to the extent it applies to lascivious exhibition) and section 2257A do not apply to matter that is produced by someone subject to the Federal Communications Commission's authority to enforce federal bans on the broadcast of obscene, indecent, or profane programming, and is created as a part of a commercial enterprise by a person who certifies to the Attorney General that he regularly and in the normal course of business collects and maintains individually identifiable name and age information regarding all performers, for purposes such as Federal and State tax, labor, and other laws. See id. 2257A(h)(1)(B). The rule to implement section 2257A will also implement this exemption and the associated certification regime, which, as noted, will also apply to matter and producers covered by this proposed rule.

Second, the Act revised the exclusions in the statute for the operations of Internet companies. Specifically, the Act amended section 2257 by excluding from the definition of ''produces'' the ''provision of a telecommunications service, or of an Internet access service or Internet information location tool * * * or the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication, without selection or alteration of the content of the communication.'' These exclusions are based on the definitions in section 231 of the Communications Act of 1934, 47 U.S.C. 231.

Third, the Act made several changes in the terminology of the statute. In subsection 2257(e)(1), it added at the end the following: ''In this paragraph, the term 'copy' includes every page of a Web site on which matter described in subsection (a) appears.'' That change is reflected in the proposed rule at §§ 75.1(e)(3), 75.6(a), and 75.8(d). The change materially affects the regulations' labeling requirement as applied to Web sites. Section 75.8(d) of the current regulations permits a producer of a computer site of service or Web site to affix the label stating where the records required under the regulations are located ''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.''' Because of the change in the statute, the proposed rule eliminates this portion of the current regulations. The proposed rule requires, per the statute, that the statement describing the location of the records required by this part be affixed to every page of a Web site (controlled by the producer) on which visual depictions of sexually explicit conduct appear.

Finally, the Act confirmed that the statute applies to secondary producers as currently (and previously) defined in the regulations. Specifically, the Act defines any of the following activities as ''produces'' for purposes of section 2257:

> (i) Actually filming, videotaping, photographing, creating a picture, digital image, or digitally- or computer-manipulated image of an actual human being;
>
> (ii) Digitizing an image, of a visual depiction of sexually explicit conduct; or, assembling, manufacturing, publishing, duplicating, reproducing, or reissuing a book, magazine, periodical, film, videotape, digital image, or picture, or other matter intended for commercial distribution, that contains a visual depiction of sexually explicit conduct; or
>
> (iii) Inserting on a computer site or service a digital image of, or otherwise managing the sexually explicit content, of a computer site or service that contains a visual depiction of, sexually explicit conduct * * *.

18 U.S.C. 2257(h)(2)(A), as amended.

It excludes from the definition of ''produces,'' however, the following activities, in pertinent part:

> (i) Photo or film processing, including digitization of previously existing visual depictions, as part of a commercial enterprise, with no other commercial interest in the sexually explicit material, printing, and video duplication;
>
> (ii) Distribution;
>
> (iii) Any activity, other than those activities identified in subparagraph (A), that does not involve the hiring, contracting for, managing, or otherwise arranging for the participation of the depicted performers * * *.

Id. 2257(h)(2)(B), as amended.

This language replaced the previous definition of ''produces'' in the statute, which stated, in pertinent part, as follows:

> [T]he term 'produces' means to produce, manufacture, or publish any book, magazine, periodical, film, video tape, computer generated image, digital image, or picture, 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 * * *.

In enacting this language, Congress upheld the Department's consistently held position that the rule's requirements for secondary producers have been in effect since the rule's original publication. As explained by

the sponsor of the Act in the House of Representatives:

> Congress previously enacted the PROTECT Act of 2003 against the background of Department of Justice regulations applying section 2257 to both primary and secondary producers. That fact, along with the Act's specific reference to the regulatory definition that existed at the time, reflected Congress' agreement with the Department of Justice's view that it already had the authority to regulate secondary procedures under the applicable law.
>
> A federal court in Colorado, however, recently enjoined the Department from enforcing the statute against secondary producers, relying on an earlier Tenth Circuit precedent holding that Congress had not authorized the Department to regulate secondary producers. These decisions conflicted with an earlier D.C. Circuit decision upholding Congress' authority to regulate secondary producers. Section 502 of the bill is meant to eliminate any doubt that section 2257 applies both to primary and secondary producers, and to reflect Congress' agreement with the regulatory approach adopted by the Department of Justice in enforcing the statute.

Congressional Record, 109th Cong., 2d Sess., July 25, 2006, at H5725.

Congress thus rejected the interpretation adopted by the court in *Sundance Assocs., Inc.* v. *Reno,* 139 F.3d 804 (10th Cir. 1998), in favor of the DC Circuit's decision upholding the application of the statute to secondary producers, *Am. Library Ass'n* v. *Reno,* 33 F.3d 78 (DC Cir. 1994). In upholding the constitutionality of the secondary-producer requirements, the DC Circuit both recognized the importance of these requirements and effectively rejected the argument that Congress lacked the authority to regulate secondary producers.

In accordance with current law, the proposed rule retains July 3, 1995, as the effective date of the rule's requirements for secondary producers. (The current regulations, published in 2005, adopted July 3, 1995, as the effective date of enforcement of section 2257 based on the Court's order in *American Library Association* v. *Reno,* No. 91–0394 (SS) (D.D.C. July 28, 1995)). The one exception is that the proposed rule would not penalize secondary producers for failing to maintain required records in connection with those acts of production that occurred prior to the effective date of the Act. While the law would permit the Department to apply the statute and regulations to actions that occurred prior to that date, the Department has determined that the rule shall not apply in such circumstances to avoid any conceivable *ex post facto* concern.

In addition to implementing the changes in the statute described above, the proposed rule clarifies several other issues. First, it clarifies that primary producers may redact non-essential information from copies of records provided to secondary producers, including addresses, phone numbers, social security numbers, and other information not necessary to confirm the name and age of the performer. However, the identification number of the picture identification card presented to confirm name and age—such as drivers' license number or passport number—may not be redacted, so that its validity may be confirmed. Second, the proposed rule clarifies that producers of visual depictions performed live on the Internet need not maintain a copy of the full running-time of every such depiction. Rather, they may maintain a copy that contains running-time sufficient to identify each and every performer in the depiction and associate each and every performer with the records needed to confirm his or her age.

Third, the proposed rule clarifies that, with regard to the government-issued photo identification required for records, a foreign-government-issued picture identification card is acceptable if the performer providing it is a foreign citizen and the producer maintaining the records produces the visual depiction of the performer in a foreign country, no matter whether the producer is a U.S. or foreign citizen. That is, a U.S. producer who produces a depiction of sexually explicit conduct while located in a foreign country may rely on a foreign-government-issued picture identification card of a performer in that depiction who is a foreign citizen. All other requirements of the regulations continue to apply *mutatis mutandis—i.e.*, the producer must examine and maintain a legible copy of the foreign-government-issued picture identification card in his records. Furthermore, a foreign-government-issued picture identification card is not sufficient to comply with the regulations for U.S. citizens, even when abroad. That is, if a U.S. producer travels to a foreign country to produce a depiction of sexually explicit conduct, all U.S. citizens performing in the depiction must have a U.S.-government-issued picture identification card, even though a foreign citizen performing in the same depiction may provide a foreign-government-issued picture identification card. And, as is the case in the current regulation, only a U.S.-government-issued picture identification card complies with the regulations in the United States, no matter whether a performer is a U.S. or foreign citizen. The regulation also states that producers of visual depictions made after July 3, 1995, the effective date of the regulations published in 1992, and before June 23, 2005, the effective date of the current regulations published in 2005, may rely on picture identification cards issued by private entities such as schools or private employers that were valid forms of required identification documentation under the provisions of part 75 in effect on the original production date.

Finally, although it is not necessary to change the text of the regulations for this purpose, the Department hereby clarifies that a producer need not keep a copy of a URL hosting a depiction that the producer produced but over which he exercises no control.

Regulatory Procedures

Regulatory Flexibility Act

The Department has drafted this proposed rule in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–612. The Department drafted the rule to minimize its effect on small businesses while meeting its intended objectives. Based upon the preliminary information available to the Department through past investigations and enforcement actions involving the affected industry, the Department is unable to state with certainty that this rule, if promulgated as a final rule, will not have any effect on small businesses of the type described in 5 U.S.C. 601(3). Accordingly, the Department has prepared a preliminary Regulatory Flexibility Act analysis in accordance with 5 U.S.C. 604, as follows:

A. Need for and Objectives of This Rule

The identity of every performer is critical to determining and assuring that no performer is a minor. The key congressional concern, evidenced by the child exploitation statutory scheme, is that all such performers verifiably not be minors, *i.e.*, not younger than 18 years of age. *See* 18 U.S.C. 2256(1), 2257(b)(1). As discussed above, Congress has recognized that minors warrant special concern in this area. Children themselves are incapable of giving voluntary and knowing consent to perform or to enter into contracts to perform. In addition, children often are involuntarily forced to engage in sexually explicit conduct. For these reasons, visual depictions of sexually explicit conduct that involve persons under the age of 18 constitute unlawful child pornography. *See* 18 U.S.C. 2256(8).

This proposed rule amends certain provisions of the existing regulations to conform to the Act, as described above.

B. Description and Estimates of the Number of Small Entities Affected by This Rule

A ''small business'' is defined by the Regulatory Flexibility Act (''RFA'') to be the same as a ''small business concern'' under the Small Business Act (''SBA''), 15 U.S.C. 632. Under the SBA, a ''small-business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. *See* 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632).

Based upon the information available to the Department through past investigations and enforcement actions involving the affected industry, there are likely to be a number of small businesses that are producers of visual depictions of sexually explicit conduct as defined in the statute, as amended by the Act.

Pursuant to the RFA, the Department requests affected small businesses to estimate what these regulations will cost as a percentage of their total revenues in order to enable the Department to ensure that small businesses are not unduly burdened.

The proposed rule has no effect on State or local governmental agencies.

C. Specific Requirements Imposed That Would Affect Private Companies

The proposed rule modifies existing requirements for private companies with regard to visual depictions of sexually explicit conduct to ensure that minors are not used in such depictions. One of these requirements that would specifically affect private companies is Congress's expansion of the coverage of the definition of ''sexually explicit conduct'' to cover lascivious exhibition.

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f). Accordingly this rule has been reviewed by the Office of Management and Budget.

The benefit of the rule is that children will be better protected from exploitation in the production of visual depictions of sexually explicit conduct by ensuring that only those who are at least 18 years of age perform in such depictions. The costs to the industry include slightly higher record-keeping costs. The Department encourages all affected commercial entities to provide specific estimates, wherever possible, of the economic costs that this rule will impose on them.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

This rule meets the applicable standards set forth in § 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, codified at 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

This proposed rule modifies existing requirements to conform to newly enacted legislation. It contains a revised information collection that satisfies the requirements of existing regulations to clarify the means of maintaining and organizing the required documents. This information collection will be submitted to the Office of Management and Budget for regular approval and comments from the public, in accordance with the Paperwork Reduction Act of 1995. Any comments received during the comment period should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) how to enhance the quality, utility, and clarity of the information to be collected; and (4) how to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

The Department of Justice has no way of estimating the annual cost burden because of the multitude of variables within the control of producers of depictions of actual sexually explicit conduct. In publishing the proposed rule for the current part 75, the Department estimated that there were 100,000 Web sites and 200 producers of DVDs, videos, and other images containing visual depictions of actually explicit conduct (as defined by the language of section 2257 at that time), constituting 2000 businesses. The Department invited comments on these estimates but received none. The Department estimates currently that there are 500,000 Web sites and at least 200 producers of DVDs, videos, and other images containing visual depictions of actually explicit conduct (as defined by the revised section 2257), constituting 5000 businesses. Again, the Department invites comments on these numbers. The Department also invites comments on the total number of visual depictions that will be subject to the proposed rule and the cost of compliance of the rule for each visual depiction.

All comments and suggestions, or questions regarding additional information, should be directed to Andrew Oosterbaan, Chief, Child Exploitation and Obscenity Section, Criminal Division, United States Department of Justice, Washington, DC 20530; (202) 514–5780. This is not a toll-free number. Comments should also be sent to: Lynn Bryant, Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

List of Subjects in 28 CFR Part 75

Crime, Infants and children, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, part 75 of chapter I of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 75—CHILD PROTECTION RESTORATION AND PENALTIES ENHANCEMENT ACT OF 1990 AND PROTECT ACT; RECORDKEEPING AND RECORD INSPECTION PROVISIONS

1. The authority citation for part 75 continues to read as follows:

Authority: 18 U.S.C. 2257.

2. Amend § 75.1 by revising paragraphs (b), (c)(4), and (e), and adding new paragraphs (m) and (n), to read as follows:

§ 75.1 Definitions.

* * * * *

(b) *Picture identification card* means a document issued by the United States, a State government or a political subdivision thereof, or a United States territory, that bears the photograph and the name of the individual identified, and provides sufficient specific information that the issuing authority can confirm its validity, such as a passport, Permanent Resident Card (commonly known as a ''Green Card''), or other employment authorization document issued by the United States, a driver's license issued by a State or the District of Columbia, or another form of identification issued by a State or the District of Columbia; or, a foreign government-issued equivalent of any of the documents listed above when the person who is the subject of the picture identification card is a non-U.S. citizen located outside the United States at the time of original production and the producer maintaining the required records, whether a U.S. citizen or non-U.S. citizen, is located outside the United States on the original production date.

(c) * * *

(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 or film processing, including digitization of previously existing visual depictions, as part of a commercial enterprise, with no other commercial interest in the sexually explicit material, printing, and video duplication;

(ii) Distribution;

(iii) Any activity, other than those activities identified in pargraphs (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;

(iv) The provision of a telecommunications service, or of an Internet access service or Internet information location tool (as those terms are defined in section 231 of the Communications Act of 1934 (47 U.S.C. 231)); or

(v) The transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication, without selection or alteration of the content of the communication, except that deletion of a particular communication or material made by another person in a manner consistent with section 230(c) of the Communications Act of 1934 (47 U.S.C. 230(c)) shall not constitute such selection or alteration of the content of the communication; and

* * * * *

(e) *Copy,* when used:

(1) In reference to an identification document or a picture identification card, means a photocopy, photograph, or digitally scanned reproduction;

(2) In reference to a visual depiction of sexually explicit conduct, means a duplicate of the depiction itself (*e.g.*, the film, the image on a Web site, the image taken by a webcam, the photo in a magazine);

(3) In reference to an image on a webpage for purposes of §§ 75.6(a) and 75.8(d), means every page of a Web site on which the image appears.

* * * * *

(m) *Date of original production* or *original production date* means the date the primary producer actually filmed, videotaped, or photographed, or created a digitally or computer-manipulated image, digital image, or picture, of the visual depiction of an actual human being engaged in actual sexually explicit conduct.

(n) *Sexually explicit conduct* has the meaning set forth in 18 U.S.C. 2256(2)(A).

3. Amend § 75.2 by revising paragraph (a)(1), adding two new sentences to the end of paragraph (b), revising paragraph (c), and adding a new paragraph (g), to read as follows:

§ 75.2 Maintenance of records.

(a) * * *

(1) The legal name and date of birth of each performer, obtained by the producer's examination of a picture identification card prior to production of the depiction. For any performer portrayed in such a depiction made after July 3, 1995, the records shall also include a legible hard copy of the identification document examined and, if that document does not contain a recent and recognizable picture of the performer, a legible hard copy of a picture identification card. For any performer portrayed in such a depiction after June 23, 2005, the records shall include a copy of the depiction and, where the depiction is published on an Internet computer site or service, a copy of any URL associated with the depiction. If no URL is associated with the depiction, the records shall include another uniquely identifying reference associated with the location of the depiction on the Internet. For any performer in a depiction performed live on the Internet, the records shall include a copy of the depiction with running-time sufficient to identify the performer in the depiction and to associate the performer with the records needed to confirm his or her age.

* * * * *

(b) * * * The copies of the records may be redacted to eliminate non-essential information, including addresses, phone numbers, social security numbers, and other information not necessary to confirm the name and age of the performer. However, the identification number of the picture identification card presented to confirm the name and age may not be redacted.

(c) The information contained in the records required to be created and maintained by this part need be current only as of the date of original production of the visual depiction to which the records are associated. If the producer subsequently produces an additional book, magazine, film, videotape, digitally- or computer-manipulated image, digital image, or picture, or other matter (including but not limited to Internet computer site or services) that contains one or more visual depictions of an actual human being engaged in 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 or identifying number and the names of the performer to the existing records maintained pursuant to § 75.2(a)(2). Producers of visual depictions made after July 3, 1995, and before June 23, 2005, may rely on picture identification cards that were valid forms of required identification documentation under the provisions of part 75 in effect during that time period.

* * * * *

(g) Records are not required to be maintained by either a primary producer or by a secondary producer for a visual depiction of sexually explicit

conduct that consists only of lascivious exhibition of the genitals or pubic area of a person, and contains no other sexually explicit conduct, whose original production date was prior to July 27, 2006.

4. Amend § 75.6 by adding a new sentence at the end of paragraph (a) and revising paragraph (b)(2), to read as follows:

§ 75.6 Statement describing location of books and records.

(a) * * * In this paragraph, the term 'copy' includes every page of a Web site on which a visual depiction of an actual human being engaged in actual sexually explicit conduct appears.

(b) * * *

(2) The date of original production of the matter; and,

* * * * *

5. Amend § 75.8 by revising paragraph (d) to read as follows:

§ 75.8 Location of the statement.

* * * * *

(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 sexually explicit conduct appears.

* * * * *

Dated: July 5, 2007.

Alberto R. Gonzales,

Attorney General.

[FR Doc. E7–13500 Filed 7–11–07; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 903

[Docket No. USAF–2007–0001]

RIN: 0701–AA72

Air Force Academy Preparatory School

AGENCY: DoD, USAF.

ACTION: Proposed rule.

SUMMARY: This proposed rule tells how to apply for the Air Force Academy Preparatory School. It also explains the procedures for selection, disenrollment, and assignment. This rule has been updated to identify USAFA's revised mission statement and the authority, add responsibilities, new selection criteria, and updates of associated Air Force Instructions.

DATES: Interested parties should submit written comments on or before September 10, 2007.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Scotty Ashley at (703) 695–3594, *scotty.Ashley@pentagon.af.mil.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that 32 CFR part 903 is not a significant regulatory action. This rule does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

It has been certified the 32 CFR part 903 does not contain a Federal Mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been determined that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule * * *.

Public Law 95–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 903 does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Federalism (Executive Order 13132)

It has been certified that 32 CFR part 903 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 903

Military academy, Military personnel.

Therefore, for the reasons set forth in the preamble, 32 CFR part 903 is proposed to be revised to read as follows:

PART 903—AIR FORCE ACADEMY PREPARATORY SCHOOL

Sec.

Authority: 5 U.S.C. 301, 10 U.S.C. 8013, and 10 U.S.C. 9331 (except as otherwise noted).

Note: This part is derived from AFI 36–2021, September 12, 2006. Part 806 of this chapter states the basic policies and instructions governing the disclosure of records and tells members of the public what they must do to inspect or obtain copies of the material referenced herein.