

Revised Regulations for Records Relating to Visual Depictions of Sexually Explicit
Conduct
DOJ Regulatory Review
RIN Number ____ - ____

PRA Supporting Statement

1. The proposed rule amends the record-keeping, labeling, and inspection requirements of 28 CFR part 75 for producers of visual depictions of actual sexually explicit conduct, to account for changes in the underlying statute made by Congress in the Adam Walsh Child Protection and Safety Act of 2006, codified at 18 U.S.C. § 2257.

Under the state and existing regulations, producers of depictions of actual sexually explicit conduct are required to maintain positive identification of performers for inspection to establish that children are not used in depictions of actual sexually explicit conduct. The United States does not acquire this information except through inspection and does not retain this information except pursuant to criminal investigation and prosecution.

This revised rule revises certain provisions of the existing regulations, and it also applies the regulations to visual depictions of the lascivious exhibition of the genitals or pubic area of a person. Many of the producers of such depictions are likely already required to provide the information collection, since they likely already produce visual depictions of the sexually explicit conduct currently covered by the regulations. Some businesses not previously required to collect the information may for the first time be covered by this revised rule, if they produce only visual depictions of lascivious exhibition.

2. The information collected is described in the proposed rule. Unless inspected, and seized as evidence of a crime, the information remains in the possession of the recordkeeper. If seized as evidence of a crime, the information will be treated in a similar fashion, and under similar restraints, as evidence otherwise held by the Department of Justice for the prosecution of criminal offenses.
3. Records may be kept in paper or electronic form as the producer may desire, so long as the records meet the requirements of the regulation.
4. No such information is otherwise available except to the extent that producers currently comply with the law.
5. Unknown. As a general proposition, producers of visual depictions of actual sexually explicit conduct may be major corporations or very small operations. There reportedly are more than 200 producers of pornographic films in the United States and approximately 500,000 commercial websites that host visual depictions of sexually explicit conduct, which are owned by at least 2000 businesses.

The figure of 500,000 websites is greater than 100,000 estimated in the original Paperwork Reduction Act analysis performed for the earlier version of these regulations. In the several years since that estimate, the figure is generally considered to have greatly increased. However, the Department of Justice has no information on how many more businesses than the 2000 identified in In addition, this figure covers businesses not previously required to collect the information because they produce only visual depictions of lascivious exhibition, covered for the first time by this revised rule. Again, the Department has no additional information regarding how many more businesses are affected than the 2000 identified for the first information collection. The Department of Justice has no information or way of estimating regarding how many of these businesses are owned and operated by small businesses.

6. As discussed in the proposed rule, the recordkeeping, labeling, and inspection requirements are designed to provide assurances that children are not involved in the production of depictions of actual sexually explicit conduct. Without requiring the maintenance of records for inspection that actually establish the identity and age of the performers, it is not possible to acquire sufficient assurances that children are not involved in the production of depictions of actual sexually explicit conduct.
7. Evidence of criminal conduct could cause an inspection to occur more frequently than quarterly. No other factor is relevant.
8. The inspection process has been discussed within the law enforcement community to assure that it will be efficacious in administering the act. Industry comments are invited in the proposed rule.
9. No payment or gift is made to the respondent
10. The Department of Justice makes no assurances of confidentiality outside the criminal investigative and prosecutive process.
11. The recordkeeping requires only documentation of identity and specific products that include depictions of actual sexually explicit conduct. The requirements do not include any of the items identified in the instructions as sensitive.
12. The Department of Justice has no way of estimating the annual recordkeeping hours burden because of the multitude of variables within the control of producers of visual depictions of actual sexually explicit conduct. As noted above, there reportedly are more than 200 producers of pornographic films in the United States and approximately 500,000 commercial websites offering pornography, produced by at least 2000 businesses. There are no statistics available on the number of depictions of actual sexually explicit conduct created each year. If, however, OMB assumes (but which the Department of Justice will not certify) that some 2,000,000 depictions of actual sexually explicit conduct (including the visual depictions of the lascivious exhibition of the genitals or pubic area of a person not previously covered by the regulation) are created each year and that it requires 6 minutes to complete the recordkeeping requirement for each depiction, the recordkeeping requirements would

imposes a burden of 200,000 hours. Industry comment has been invited in the proposed rule and a more refined number may be provided if the industry provides information that is considered reliable and credible, and upon which an estimate may be developed. The Department of Justice does not certify the accuracy of these numbers.

13. 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. As noted above, there reportedly are more than 200 producers of pornographic films in the United States and approximately 500,000 commercial websites offering pornography, produced by at least 2000 businesses. There are no statistics available on the number of depictions of actual sexually explicit conduct created each year. If, however, for the purposes of satisfying the requirements of this certification, OMB assumes (and which the Department of Justice will not certify) that some 2,000,000 depictions of actual sexually explicit conduct are created each year and that it requires 6 minutes to complete the recordkeeping requirement for each depiction, the recordkeeping requirements would impose a burden of 200,000 hours. If OMB further assumes that the record keeping requirements will cost \$6.00 per hour to complete, and \$0.05 for each image of a verifiable form of identification, and \$0.05 for each such depictions of actual sexually explicit conduct, the total annual cost would be \$1,400,000. Industry comment has been invited in the proposed rule and a more refined number may be provided if the industry provides information that is considered reliable and credible, and upon which an estimate may be developed. The Department of Justice does not certify the accuracy of the numbers.
14. Annualized costs to the United States are limited by appropriations to those cases that can be inspected, investigated and prosecuted.
15. This is a revision of a currently approved collection which, among other things, applies the information collection requirement to additional sexually explicit material produced by businesses that have been obligated to collect the information and to some businesses that were not previously obligated to collect the information. The additional requirements are a result of statutory changes in the Adam Walsh Child Protection and Safety Act of 2006.
16. This information will not be published.
17. There is no form associated with this recordkeeping requirement for this information collection.
18. There are no exceptions to the Paperwork Reduction Act Certification for this collection.