

**DEPARTMENT OF JUSTICE****28 CFR Part 81**

[Docket No. CRM 100I; AG Order No. 2692–2003]

RIN 1105–AA65

**Designation of Agencies To Receive and Investigate Reports Required Under the Protection of Children From Sexual Predators Act, as Amended****AGENCY:** Department of Justice.**ACTION:** Interim final rule.

**SUMMARY:** This Interim final rule finalizes a portion of a proposed rule published on May 26, 1999, 64 FR 28422, and fulfills the Attorney General's responsibilities under the child pornography reporting provisions of the Protection of Children from Sexual Predators Act of 1998, as amended. This Interim final rule requires the National Center for Missing and Exploited Children to forward the report of apparent child pornography to the law enforcement agencies designated in the 1999 proposed rule (the Federal Bureau of Investigation and the Bureau of Immigration and Customs Enforcement,<sup>1</sup> and also designates the United States Postal Inspection Service and the United States Secret Service as recipients of the report.

Other matters discussed in the 1999 proposed rule, such as the contents of the report, the means for making the report to Federal agencies, monitoring, and definitions, will be addressed at a later time through a subsequent final rule.

**DATES:** *Effective date:* This Interim final rule is effective December 4, 2003.

*Comment date:* Written comments must be submitted on or before January 5, 2004.

**ADDRESSES:** Please submit written comments to Andrew G. Oosterbaan, Chief, Child Exploitation and Obscenity Section, Criminal Division, Department of Justice, 1400 New York Ave., NW., Suite 600, Washington, DC, 20530, telephone (202) 514–5780. To ensure proper handling, please reference CRM 100 on your correspondence. Comments may also be submitted electronically to the Criminal Division at [Admin.Ceos@usdoj.gov](mailto:Admin.Ceos@usdoj.gov). When submitting comments electronically, please include CRM 100 in the subject heading. Comments are available for public inspection at this location by

calling (202) 514–5780 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:**

Andrew G. Oosterbaan, Chief, Child Exploitation and Obscenity Section, Criminal Division, Department of Justice, 1400 New York Ave., NW., Suite 600, Washington, DC, 20530, telephone (202) 514–5780.

**SUPPLEMENTARY INFORMATION:****Entities Affected by This Regulation**

The child pornography reporting provisions of the Protection of Children from Sexual Predators Act (PCSPA) were enacted as section 604 of the Act, Pub. L. 105–314, 112 Stat. 2974, codified at 42 U.S.C. 13032 (1999 Supp.) and 18 U.S.C. 2702(b)(6). As set forth at 42 U.S.C. 13032, the PCSPA originally required providers of electronic communication services or remote computing services to the public through a facility or means of interstate or foreign commerce (“providers”) who obtain knowledge of the apparent production, distribution, or possession of child pornography<sup>2</sup> to make a report of such facts or circumstances to a law enforcement agency or agencies designated by the Attorney General. As set forth *infra*, the statute was subsequently amended to require providers to report directly to the National Center for Missing and Exploited Children (NCMEC), which then forwards reports to designated law enforcement agencies. Thus, in view of the previously-existing statutory reporting requirements imposed on providers, this regulation affects only the law enforcement agencies designated herein and NCMEC (to the extent that it is directed to share reports with designated law enforcement agencies).

**Rulemaking History**

The Department of Justice published a proposed rule on May 26, 1999, 64 FR 28422 (the “1999 proposed rule”), proposing to carry out the Attorney General's responsibilities under the child pornography reporting provisions of the PCSPA.

Under the 1999 proposed rule, reports of child pornography made pursuant to 42 U.S.C. 13032 were to be submitted by providers directly to the Federal Bureau of Investigation (FBI) and the United States Customs Service (USCS) (the investigative arm of the Customs Service is now in the Bureau of Immigration and Customs Enforcement (BICE) at the Department of Homeland Security), which then had jurisdiction to

investigate reports of child pornography on electronic communication services or remote computing services. The 1999 proposed rule also outlined the contents of the report and the means for making the report, indicated that providers had no duty to monitor customers or content,<sup>3</sup> referred providers to the Electronic Communications Privacy Act, and included definitions.

The 1999 proposed rule included a request for comments by July 26, 1999. The Department received three comments concerning two aspects of the proposed rule.

On November 29, 1999, as part of the Consolidated Appropriations Act, 2000, Pub. L. 106–113, 113 Stat. 1501, Congress amended 42 U.S.C. 13032 to require providers to report incidents of suspected child pornography to the “Cyber Tipline” at NCMEC, which is required to forward that report to a law enforcement agency or agencies designated by the Attorney General.

On April 30, 2003, as part of the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003, Pub. L. 108–21, 117 Stat. 650 (the “PROTECT Act”), Congress amended 42 U.S.C. 13032 to allow NCMEC to forward provider reports to State and local law enforcement agencies where State law has been violated and to expand the duties of the United States Secret Service (“Secret Service”) to include providing forensic and investigative assistance to NCMEC in support of any investigation involving missing or exploited children.

**Comparison of This Interim Final Rule With the 1999 Proposed Rule**

Because the 1999 amendment to 42 U.S.C. 13032 changed the recipient of the reports, this Interim final rule (“Interim final rule”) reflects that amendment.

This Interim final rule requires the providers to report instances of apparent child pornography to the “Cyber Tipline” at NCMEC (<http://www.CyberTipline.com>). The Interim final rule requires NCMEC to forward the report of apparent child pornography to the law enforcement agencies designated in the 1999 proposed rule (the FBI and the USCS (now BICE)), and also designates the United States Postal Inspection Service (Postal Inspection Service) and the

<sup>1</sup> The Bureau of Immigration and Customs Enforcement was formerly known as the United States Customs Service and was referred to in the 1999 proposed rule as such.

<sup>2</sup> See sections 2251, 2251A, 2252, 2252A, and 2260 of title 18, United States Code.

<sup>3</sup> The statute already notes this fact. See 42 U.S.C. 13032(e) (“Nothing in this section may be construed to require a provider of electronic communication services or remote computing services to engage in the monitoring of any user, subscriber, or customer of that provider, or the content of any communication of any such person.”).