

Secret Service as recipients of the report.

The Interim final rule reflects only a portion of the 1999 proposed rule. For example, the Interim final rule does not elaborate on the contents of the report, the means for making the report to Federal agencies (now moot due to the 1999 amendment to the statute), a discussion of monitoring (already explicitly covered by 42 U.S.C. 13032). Nor does the Interim final rule contain any reference to the Electronic Communications Privacy Act, or definitions. These issues will be addressed at a later time through a subsequent final rule.

Discussion of Comments on the 1999 Proposed Rule

National Center for Missing and Exploited Children as Designated Agency

NCMEC and the Internet Alliance commented that the Department should designate NCMEC as the conduit agency through which Federal law enforcement would receive reports under the PCSPA. NCMEC stated that its "Cyber Tipline," which already receives reports of illegal Internet activity from citizens and the online industry, would be the appropriate repository of PCSPA reports. According to NCMEC, Federal law enforcement agencies have concurrent access to the "Cyber Tipline" and would be able to review PCSPA reports immediately.

The 1999 amendment to 42 U.S.C. 13032 requires that all reports be sent to NCMEC, and the Interim final rule is consistent with that amendment. Providers will first telephone NCMEC (800-THE-LOST) to obtain an identification number and a password to be used for all future reports. The provider will then be able to log on to a section of the "Cyber Tipline" that is designed for reporting by providers (<http://www.CyberTipline.com>). When the provider logs on to the "Cyber Tipline," it will be required to complete a reporting form requesting information about the apparent child pornography.

The Interim final rule directs NCMEC to fulfill its obligation to forward the reports received through its "Cyber Tipline" by providing them to designated law enforcement agencies. The 1999 proposed rule designated the FBI and BICE (then the U.S. Customs Service) as recipients of the reports. In addition, this Interim final rule designates the Postal Inspection Service and the Secret Service as recipients of reports. The purpose for expanding the number of law enforcement agencies designated to receive the reports from

NCMEC is to increase the amount of law enforcement resources available to combat child pornography on the Internet. Both the Postal Inspection Service and the Secret Service have substantial experience investigating child pornography cases. The need for greater resources is evidenced by two recent changes made by the PROTECT Act. One change authorizes the Secret Service to provide forensic and investigative assistance to NCMEC. See PROTECT Act § 322, codified at 18 U.S.C. 3056. The other allows NCMEC to forward reports to state and local law enforcement agencies where state law is violated. See PROTECT Act § 508, codified at 42 U.S.C. 13032.

Clarification on Reference to the Electronic Communications Privacy Act of 1986

The Commercial Internet eXchange (CIX) commented that § 84.14, "Contents of the Report," suggested by implication that the provider was required to search its records for the identity of subscribers who are suspected of violating the child pornography laws. CIX argued that such an independent disclosure would be in violation of the Electronic Communications Privacy Act of 1986. It further argued that such disclosure would contravene Congressional statements during consideration of the bill that the statute does not require disclosure of the name of the subscriber that was retrieved from the provider's files. CIX suggested that § 84.14(a) be amended to include the phrase "if they are not obtained from the provider's files" after the section's suggestion that the report could include "the identity of persons or screen names of persons transmitting or receiving child pornography."

The Interim final rule does not contain § 84.14 of the 1999 proposed rule, the substance of which will be promulgated separately at a later date. At that time, the CIX comment will be addressed.

Administrative Procedure Act

This Interim final rule adopts, in part, the provisions of the 1999 proposed rule, and also makes several changes in response to intervening legislation. Because the changes made in the Interim final rule are a logical outgrowth of the 1999 proposed rule, it is not necessary to provide an additional period of notice and comment. See, e.g., *Association of Battery Recyclers, Inc. v. EPA*, 208 F.3d 1047, 1958-59 (D.C. Cir. 2000) (stipulating that a final rule need not be exactly the same as the proposed rule as long as it is a logical outgrowth

of the proposed rule). This Interim final rule is a logical outgrowth of the proposed rule because "reports of child pornography made pursuant to 42 U.S.C. 13032 are to be submitted to the Federal agencies that currently have jurisdiction to investigate reports of child pornography on electronic communication services or remote computing services." See 64 FR 28422, 28423 (1999 proposed rule). This Interim final rule does precisely that—it designates those Federal law enforcement agencies, expanded from two to four, that have jurisdiction to investigate child pornography that should now receive such reports. In addition, this Interim final rule responds to a specific comment to the 1999 proposed rule that NCMEC ought to be the conduit for such reports between the providers and designated Federal law enforcement agencies. In the Interim final rule, NCMEC is now the conduit. The scope and purpose of the two rules are similar: The providers were required under the 1999 proposed rule to report suspected child pornography, and that reporting requirement remains unchanged; merely the recipients of the report are different. The recipients of the providers' reports have been reduced from two possible agencies (the FBI or then-USCS) to one organization, NCMEC. Additional notice and public comment would not elicit criticisms that are relevant to the designation of two additional Federal agencies to receive reports through NCMEC, as those designations are within the Attorney General's discretion and, in the case of the Secret Service, reflect a statutory change to the mission of that agency.

Moreover, additional notice and public commentary are unnecessary. Since 1999, the providers have been required by 42 U.S.C. 13032 to make reports to NCMEC, and the Interim final rule will have no effect on their ongoing reporting obligations. Adding the Postal Inspection Service and the Secret Service as agencies to which NCMEC must forward reports will not impose any additional burden on the providers. Therefore, notice and public commentary are unnecessary, and the Department of Justice has good cause to promulgate this regulation as an Interim final rule without additional notice and comment, see 5 U.S.C. 553(b)(3)(B), although the Department is soliciting post-promulgation public comment on this Interim final rule.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this