

fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(ii) The provisions of paragraphs (c)(3) and (c)(4)(i) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, a drug or drugs, or a controlled substance or controlled substances, or any combination thereof.

**§ 234.18 Enforcement of parking regulations.**

Parking regulations for the Pentagon Reservation shall be enforced in accordance with the Pentagon Reservation Parking Program and State law; violating such provisions is prohibited. A vehicle parked in any location without authorization, or parked contrary to the directions of posted signs or markings, shall be subject to removal at the owner's risk and expense, in addition to any penalties imposed. The Department of Defense assumes no responsibility for the payment of any fees or costs related to such removal which may be charged to the owner of the vehicle by the towing organization. This section may be supplemented from time to time with the approval of the Director, Washington Headquarters Services, or his designee, or the Installation Commander, by the issuance and posting of such parking directives as may be required, and when so issued and posted such directive shall have the same force and effect as if made a part hereof.

**§ 234.19 Penalties and effect on other laws.**

(a) Whoever shall be found guilty of willfully violating any rule or regulation enumerated in this part is subject to the penalties imposed by Federal law for the commission of a Class B misdemeanor offense.

(b) Whoever violates any rule or regulation enumerated in this part is liable to the United States for a civil penalty of not more than \$1,000.

(c) Nothing in this part shall be construed to abrogate any other Federal laws.

**PART 235—SALE OR RENTAL OF SEXUALLY EXPLICIT MATERIAL ON DOD PROPERTY**

Sec.

- 235.1 Purpose.
- 235.2 Applicability and scope.
- 235.3 Definitions.
- 235.4 Policy.
- 235.5 Responsibilities.
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- 235.7 Information requirements.

AUTHORITY: 10 U.S.C. 2489a.

SOURCE: 71 FR 66459, Nov. 15, 2006, unless otherwise noted.

**§ 235.1 Purpose.**

This part implements 10 U.S.C. 2489a, consistent with DoD Instruction 1330.09,<sup>1</sup> by providing guidance about restrictions on the sale or rental of sexually explicit materials on property under the jurisdiction of the Department of Defense or by members of the Armed Forces or DoD civilian officers or employees, acting in their official capacities.

**§ 235.2 Applicability and scope.**

This part:

(a) Applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to as the "DoD Components").

(b) Shall not confer rights on any person.

**§ 235.3 Definitions.**

For the purpose of this part, the following definitions apply:

*Dominant theme.* A theme of any material that is superior in power, influence, and importance to all other themes in the material combined.

*Lascivious.* Lewd and intended or designed to elicit a sexual response.

*Material.* An audio recording, a film or video recording, or a periodical with

<sup>1</sup>Copies may be obtained at <http://www.dtic.mil/whs/directives/>.

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visual depictions, produced in any medium.

*Property under the jurisdiction of the Department of Defense.* Commissaries, facilities operated by the Army and Air Force Exchange Service, the Navy Exchange Service Command, the Navy Resale and Services Support Office, Marine Corps Exchanges, and ship stores.

*Sexually explicit material.* Material, the dominant theme of which is the depiction or description of nudity, including sexual or excretory activities or organs, in a lascivious way.

#### § 235.4 Policy.

It is DoD policy that:

(a) No sexually explicit material may be offered for sale or rental on property under the DoD jurisdiction, and no member of the Armed Forces or DoD civilian officer or employee, acting in his or her official capacity, shall offer for sale or rental any sexually explicit material.

(b) Material shall not be deemed sexually explicit because of any message or point of view expressed therein.

#### § 235.5 Responsibilities.

(a) The Principal Deputy Under Secretary of Defense for Personnel and Readiness (PDUSD(P&R)), under the Under Secretary of Defense for Personnel and Readiness, shall:

(1) Monitor and ensure compliance with this part.

(2) Establish a Resale Activities Board of Review (the "Board") and approve senior representatives from the Army and Air Force Exchange Service, the Navy Exchange Service Command, and the Marine Corps Exchange Service; and approve a senior representative from each of the Military Departments, if designated by the Military Department concerned, to serve as board members on the Resale Activities Board.

(3) Appoint a Chair of the Board.

(4) Monitor the activities of the Board and ensure that the Board discharges its responsibilities as set forth in § 235.6.

(b) The Secretaries of the Military Departments shall ensure that their respective component DoD resale activities comply with this Part and may

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designate a senior representative to serve on the Board.

(c) The Secretary of the Army and the Secretary of the Air Force shall each appoint one senior representative from the Army and Air Force Exchange Service to serve on the Board.

(d) The Secretary of the Navy shall appoint a senior representative from the Navy Exchange Service Command and a senior representative from the Marine Corps Exchange Service to serve on the Board.

#### § 235.6 Procedures.

(a) The Board shall periodically review material offered or to be offered for sale or rental on property under DoD jurisdiction and determine whether any such material is sexually explicit in accordance with this part.

(b) If the Board determines that any material offered for sale or rental on property under DoD jurisdiction is sexually explicit, such material shall be withdrawn from all retail outlets where it is sold or rented and returned to distributors or suppliers, and shall not be purchased absent further action by the Board.

(c) The Board shall convene as necessary to determine whether any material offered or to be offered for sale or rental on property under DoD jurisdiction is sexually explicit. The Board members shall, to the extent practicable, maintain and update relevant information about material offered or to be offered for sale or rental on property under DoD jurisdiction.

(d) If any purchasing agent or manager of a retail outlet has reason to believe that material offered or to be offered for sale or rental on property under DoD jurisdiction may be sexually explicit as defined herein, and such material is not addressed by the Board's guidance issued pursuant to paragraph (e) of this section, he or she shall request a determination from the Board about such material prior to purchase or as soon as possible.

(e) At the conclusion of each review and, as necessary, the Board shall issue guidance to purchasing agents and managers of retail outlets about the purchase, withdrawal, and return of sexually explicit material. The Board