

caused by the exploitation of longer-length visas.

*Small Business Regulatory Enforcement Fairness Act of 1996*

Under Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804), a rule that is likely to result in an annual effect on the U.S. economy of \$100,000,000 or more, along with other criteria, is considered a major rule. State concludes that this rule does not meet the criteria for a major rule.

*Regulatory Flexibility Act/Executive Order 13272: Small Business*

Since this rule is exempt from the notice-and-comment rulemaking provisions of 5 U.S.C. 553, the Regulatory Flexibility Act does not apply to this rulemaking. See 5 U.S.C. 601(2).

*The Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before promulgating any general notice of proposed rulemaking, or any final rule for which a general notice of proposed rulemaking was published, that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. No such burden is being imposed by this rulemaking.

*Executive Orders 12866 and 13563*

State has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and certifies that the benefits of this rulemaking outweigh the costs. State does not consider this rule to be an economically significant regulatory action under Executive Order 12866. In addition, State has considered this rule in light of Executive Order 13563 and affirms that this regulation is consistent with the guidance therein.

*Executive Orders 12372 and 13132: Federalism*

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of section 5 of Executive Order 13175 do not apply to this rulemaking.

*Paperwork Reduction Act*

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

**List of Subjects in 22 CFR Part 41**

Aliens, Foreign officials, Immigration, Passports and visas, Students.

Accordingly, for the reasons set forth in the preamble, 22 CFR part 41 is amended as follows:

**PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED**

■ 1. The authority citation for part 41 continues to read as follows:

**Authority:** 8 U.S.C. 1104; Pub. L. 105-277, 112 Stat. 2681-795 through 2681-801; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108-458, as amended by section 546 of Pub. L. 109-295).

■ 2. In § 41.122:

- a. Revise paragraph (b);
- b. Add a sentence at the end of paragraph (c); and
- c. Revise paragraph (d).

The revisions and addition read as follows:

**§ 41.122 Revocation of visas.**

\* \* \* \* \*

(b) *Provisional revocation*—(1) *General.* A provisional revocation is subject to reversal through internal procedures established by the Department of State. Upon reversal of the revocation, the visa immediately resumes the validity provided for on its face. Provisional revocation shall have the same force and effect as any other visa revocation under INA 221(i), unless and until the revocation has been reversed. Neither the provisional revocation of a visa nor the reversal of a provisional revocation limits, in any way, the revocation authority provided for under INA 221(i), with respect to the particular visa or any other visa.

(2) *Pending visa eligibility determination.* A consular officer, the Secretary, or any Department official to whom the Secretary has delegated this

authority may provisionally revoke a nonimmigrant visa while considering information related to whether a visa holder is eligible for the visa.

(3) *Automatic provisional revocation based on failure to comply with all EVUS requirements.* Visas held by individuals subject to the Electronic Visa Update System (EVUS) who have not complied with the conditions described in 8 CFR 215.24 or whose notification of compliance has expired or been rescinded are automatically provisionally revoked and are no longer valid for travel to the United States, without further notice to the visa holder. The automatic provisional revocation pursuant to this paragraph (b)(3) shall be automatically reversed upon compliance with EVUS requirements set out at 8 CFR part 215, subpart B, as confirmed by receipt of a notification of compliance. A visa revoked on grounds other than failure to comply with EVUS shall remain revoked, notwithstanding compliance with EVUS.

(c) \* \* \* This paragraph (c) does not apply to provisional revocations under paragraph (b)(3) of this section.

(d) *Procedure for physically canceling visas.* Except for provisional revocations pursuant to paragraph (b)(3) of this section, a nonimmigrant visa that is revoked shall be canceled by writing or stamping the word “REVOKED” plainly across the face of the visa, if the visa is available to the consular officer. The failure or inability to physically cancel the visa does not affect the validity of the revocation.

\* \* \* \* \*

Dated: October 13, 2016.

**Michele Thoren Bond,**

*Assistant Secretary for Consular Affairs,  
Department of State.*

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 64**

[Docket ID: DOD-2016-OS-0096]

**RIN 0790-AJ52**

**Management and Mobilization of Regular and Reserve Retired Military Members**

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

**ACTION:** Final rule.

**SUMMARY:** This final rule removes DoD's regulation concerning the management and mobilization of regular and reserve retired military members. This rule does not create the DoD's authority to recall retired members, but it directs how DoD can deploy those members once recalled into active service. Accordingly, the codified rule deals with agency management/personnel, and has been determined to not require rulemaking. Alternatively, this rule is covered by the notice-and-comment exception for military affairs, because the rule governs the uniquely military decision of how best to employ and deploy assets. Therefore, this CFR part can be removed.

**DATES:** This rule is effective on October 20, 2016.

**FOR FURTHER INFORMATION CONTACT:** Patricia Toppings at 571-372-0485.

**SUPPLEMENTARY INFORMATION:** Once signed, a copy of DoD's internal guidance contained in DoD Instruction 1352.01 will be made available on the DoD Directives Web site at <https://www.dtic.mil/whs/directives/corres/pdf/135201p.pdf>.

It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing DoD internal policies and procedures that are publically available on the Department's issuance Web site.

The removal of this rule will be reported in future status updates of DoD's retrospective review plan in accordance with the requirements in Executive Order 13563. DoD's full plan can be accessed at: <http://www.regulations.gov/#!doCKETDetail;D=DOD-2011-OS-0036>.

#### List of Subjects in 32 CFR Part 64

Military personnel.

#### PART 64—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 64 is removed.

Dated: October 14, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 235

[Docket ID: DOD-2016-OS-0098]

RIN 0790-AJ15

#### Sale or Rental of Sexually Explicit Material on DoD Property

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

**ACTION:** Final rule.

**SUMMARY:** This final rule removes DoD's regulation concerning sale or rental of sexually explicit material on Department of Defense (DoD) property. The codified rule does not impose any duty or obligation on the public that is not already imposed by statute. The rule paraphrases and does not substantially deviate from 10 U.S.C. 2495b, which establishes the prohibition on selling or renting sexually explicit material on DoD property. Also, the codified rule delegates internal authorities and establishes procedures for administering the statute, neither of which have public impact. Consequently, **Federal Register** rulemaking is not necessary under the Administrative Procedure Act.

**DATES:** This rule is effective on October 20, 2016.

**FOR FURTHER INFORMATION CONTACT:** Patricia Toppings at 571-372-0485.

**SUPPLEMENTARY INFORMATION:** The Department of Defense published a proposed rule in the **Federal Register** titled "Prohibition of the Sale or Rental of Sexually Explicit Material on DoD Property" on December 22, 2015 (80 FR 79526-79528) for a 60-day public comment period. The Department of Defense received five public comments.

After publishing the proposed rule, DoD began a review of all rules currently being processed to determine if publication in the **Federal Register** is required. After reconsidering publication of the proposed rule against Administrative Procedure Act criteria and exceptions, DoD decided not to publish a final rule and to remove the previously-codified rule from the CFR. Although DoD has decided to remove the previously-codified rule, we are addressing the public comments received on the proposed rule that published in the **Federal Register** on December 22, 2015.

*Comment 1:* I believe this proposed rule is not only an excellent example of agency waste, but a direct infringement of Constitutional Rights that employment by the DoD in any manner

cannot supersede. It would appear there are some great ambiguities associated with the definitions that structure this rule. The definition of Lascivious, "lewd and intended or designed to elicit a sexual response," which also controlling in the definition of sexual elicit material is too ambiguous. If an employee or citizen acting as a representative of the DoD has a foot fetish, will all magazines depicting bare feet be banned? Then the word lewd within the definition, what qualifies as lewd? Is it more or less lewd if in a novel the author describes an intimate evening between a hetero couple or homosexual couple?

*Comment 2:* So not only can a man or woman be sent into harm's way without questioning the reasons for being sent, but they can't even purchase from the exchange or PX material that is deemed ". . . Lascivious. Lewd and intended or designed to elicit a sexual response."? And who deems material to be considered prohibited for sale or rent on DoD property? A board of censors. Yes this is censorship, plain and simple. This is an end around the First Amendment of the Constitution. Why? Will this regulation improve our readiness or war fighting capability? No. Will this regulation reduce our readiness or war fighting capability? No. Is there solid, objective science showing that availability of this sort of deemed material leads to other behavior or effects that reduces our readiness or war fighting capability to a greater extent than other products or services offered for sale on DoD property such as alcoholic beverages, tobacco products, sugar-laden pop and greasy carbs-loaded prepared food? Hence making the reason for this regulation by reference to other directives spurious. Will this regulation reduce revenue generated by the retail sales operations of the various branches of our military services? Yes. If so, has this cost been included in the calculation of the cost of compliance with this regulation? No. Is the cost of the time of the members of the board and of the various submissions of material for review and judgement of the board been included in calculating the cost of this regulation? No. What objective criteria is used to determine if material should be submitted for review or upon which a determination be made to offer for sale or not? Not specified. For instance, under the authority of regulation, the purchase of the right to play a song by the DoD said to contain lyrics deemed lascivious, lewd and intended or designed to elicit a sexual response could be prohibited. This would make virtually the entire book of