



DoD INSTRUCTION 4105.70

PROHIBITION OF THE SALE OR RENTAL OF SEXUALLY EXPLICIT MATERIAL ON DoD PROPERTY

Originating Component: Office of the Under Secretary of Defense for Personnel and Readiness

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Reissues and Cancels: DoD Instruction 4105.70, "Sale or Rental of Sexually Explicit Material on DoD Property," June 2, 2006, as amended

Approved by: Peter Levine, Performing the Duties of the Under Secretary of Defense for Personnel and Readiness

Purpose: In accordance with the authority in DoD Directive 5124.02, this issuance:

- Establishes policy and assigns responsibilities for restrictions on the sale or rental of sexually explicit materials:
 - On property under the jurisdiction of the DoD; or
 - By Service members or DoD civilian employees acting in their official capacities in accordance with Section 2495b of Title 10, United States Code (U.S.C.) and consistent with DoD Instruction 1330.09.
- Establishes the Resale Activities Review Board (referred to in this instruction as the "Board") consistent with Section 2495b of Title 10, U.S.C. and DoD Instruction 5105.18.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY. This issuance applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint 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 DoD (referred to collectively in this issuance as the “DoD Components”).

1.2. POLICY. It is DoD policy that:

a. No sexually explicit material will be offered for sale or rental on property under DoD jurisdiction.

b. No Service member or DoD civilian employee, acting in an official capacity, may offer for sale, remuneration, or rental sexually explicit material to another person.

SECTION 2: RESPONSIBILITIES

2.1. ASSISTANT SECRETARY OF DEFENSE FOR MANPOWER AND RESERVE

AFFAIRS (ASD(M&RA)). The ASD(M&RA), under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness, and in accordance with DoD Directives 5124.02 and 5124.09:

- a. Monitors and ensures compliance with this instruction.
- b. Establishes the nine-member Board.
- c. Appoints six Board members and three alternates in accordance with Section 2495b of Title 10, U.S.C., and Paragraph 3.1. of this instruction.
- d. Designates one Board member to be the Chair.
- e. Monitors the activities of the Board and ensures that the Board discharges its responsibilities as described in Section 3 of this instruction.
- f. Reviews the Board's recommendations and makes the final determination whether material is sexually explicit, as defined by Section 2495b of Title 10, U.S.C.

2.2. DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR MILITARY

COMMUNITY AND FAMILY POLICY. Under the authority, direction, and control of the ASD(M&RA), the Deputy Assistant Secretary of Defense for Military Community and Family Policy:

- a. Administers the Board and provides military resale policy guidance.
- b. Publicizes the Board's recommendations through the Office of the Under Secretary of Defense for Personnel and Readiness public website.

2.3. GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE. The General Counsel of the Department of Defense provides legal advice to the Board.

2.4. SECRETARIES OF THE MILITARY DEPARTMENTS. The Secretaries of the Military Departments:

- a. Ensure that their respective Department's resale activities comply with this instruction.
- b. Each appoint one member to the Board, in accordance with Section 2495b of Title 10, U.S.C.
- c. Provide nominees to the ASD(M&RA) concerning the six Board members and three alternates appointed by the ASD(M&RA) in accordance with Paragraph 3.1.

d. Promptly notify the Deputy Assistant Secretary of Defense for Military Community and Family Policy of a current or projected vacancy on the Board.

2.5. CHIEF OF THE NATIONAL GUARD BUREAU. The Chief of the National Guard Bureau recommends to the ASD(M&RA) a senior noncommissioned officer for appointment to the Board who will represent the Senior Enlisted Advisor of the National Guard Bureau.

SECTION 3: RESALE ACTIVITIES REVIEW BOARD

3.1. COMPOSITION. The Board will have nine members and three alternates, including at least one member, appointed by the ASD(M&RA), with experience managing or advocating for military family programs and who is also an eligible patron of the Defense commissary system and the Defense exchange system.

a. Board members and alternates will be representatives of the following:

(1) The Senior Enlisted Advisors of the Army, the Navy, the Air Force, Marine Corps, and the National Guard Bureau.

(2) The Surgeons General of the Army, the Navy, and the Air Force.

(3) The military community and family programs of the Army, Navy, Air Force, and Marine Corps.

b. Board members will be senior full-time or permanent part-time DoD civilian employees or active duty Service members not currently assigned to or employed by the Army and Air Force Exchange Service, the Navy Exchange Service Command, or the Marine Corps Exchange Service.

c. The ASD(M&RA) will appoint one member to be Chair for a 2-year term; the Chair will rotate among the Military Departments.

d. A vacancy on the Board will be filled in the same manner as the original appointment.

3.2. AUTHORITIES.

a. The Board has the authority and responsibility to review material offered or to be offered for sale or rental on property under DoD jurisdiction and to recommend to the ASD(M&RA) whether any such material is sexually explicit as defined in Section 2495b of Title 10, U.S.C.

b. If the ASD(M&RA) determines that any material offered for sale or rental on property under DoD jurisdiction is sexually explicit, such material must be withdrawn from all retail outlets where it is sold or rented and returned to distributors or suppliers. Any material that is determined to be sexually explicit will not be offered for sale or rental on property under DoD jurisdiction unless the Board reconsiders the material under Paragraph 3.3.d of this Section, and the ASD(M&RA) decides that the material is not sexually explicit.

3.3. PROCEDURES.

a. The Board will convene at least once a year, and additionally as necessary, to review and make recommendations to the ASD(M&RA) concerning whether any material offered or to be offered for sale or rental on property under DoD jurisdiction is sexually explicit as defined in

Section 2495b of Title 10, U.S.C. The Board will, to the extent practicable, maintain and update relevant information about Board recommendations.

b. At the conclusion of the Board's review and the ASD(M&RA) determination, the ASD(M&RA) will issue guidance to the Military Departments for exchange service headquarters, purchasing agents, and managers of retail outlets about the purchase, withdrawal, and return of sexually explicit material. The ASD(M&RA) may also provide guidance to the Military Departments for exchange service headquarters, purchasing agents, and managers of retail outlets about material that he or she has determined is not sexually explicit. Purchasing agents and managers of retail outlets will continue to follow their usual purchasing and stocking practices unless instructed otherwise by the ASD(M&RA).

c. Any purchasing agent or manager of a retail outlet must request in writing a review from the Board and ASD(M&RA) determination about questionable material either before purchase or as soon as possible if:

(1) He or she 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 in Section 2495b of Title 10, U.S.C.

(2) Such material is not addressed by the ASD(M&RA)'s guidance issued in Paragraph 3.b of this Section.

d. Material determined to be sexually explicit by the ASD(M&RA) may be submitted to the Board for reconsideration every 5 years. If substantive changes in the publication standards occur earlier, the purchasing agent or manager of a retail outlet under DoD jurisdiction may request a review.

e. The Board will establish procedures for the exchange services to provide material for the Board to review.

GLOSSARY

G.1. ACRONYMS.

ASD(M&RA)	Assistant Secretary of Defense for Manpower and Reserve Affairs
U.S.C.	United States Code

G.2. DEFINITIONS. These terms and their definitions are for the purpose of this issuance.

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 visual depictions, produced in any medium.

property under the jurisdiction of the DoD. Includes commissaries, all facilities operated by the Army and Air Force Exchange Service, the Navy Exchange Service Command, the Navy Resale and Services Support Office, and the Marine Corps Exchange; 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.

REFERENCES

- DoD Directive 5124.02, “Under Secretary of Defense for Personnel and Readiness (USD(P&R)),” June 23, 2008
- DoD Directive 5124.09, “Assistant Secretary of Defense for Readiness and Force Management,” June 12, 2014
- DoD Instruction 1330.09, “Armed Services Exchange Policy,” December 7, 2005
- DoD Instruction 5105.18, “DoD Intergovernmental and Intragovernmental Committee Management Program,” July 10, 2009, as amended
- Section 2495b of Title 10, United States Code