

of the timer and other controls, and the use of protective eyewear.

(iv) Instructions for obtaining repairs and recommended replacement components and accessories which are compatible with the sunlamp product, including compatible protective eyewear, ultraviolet lamps, timers, reflectors, and filters, which will, when installed and used as instructed, result in continued compliance with the standard.

(v) Manufacturers of sunlamp products shall provide as an integral part of any user instruction or operation manual that is regularly supplied with the product, or, if not so supplied, shall cause to be provided with each sunlamp product: Adequate instructions for assembly, operation, and maintenance, including clear warnings concerning precautions to avoid possible exposure to ultraviolet radiation during assembly, testing, and maintenance, and a schedule of maintenance necessary to keep the sunlamp product in compliance with this section.

(2) *Ultraviolet lamps.* The users' instructions for an ultraviolet lamp not accompanying a sunlamp product shall contain:

(i) A reproduction of the label information required in paragraph (d)(2) of this section, prominently displayed at the beginning of the instructions.

(ii) A warning that the instructions accompanying the sunlamp product must always be followed to avoid or to minimize potential injury.

(3) *Promotional materials.* Manufacturers of sunlamp products shall provide or cause to be provided in all catalogs, specification sheets, and descriptive brochures intended for consumers in which sunlamp products are offered for sale, and on all consumer-directed Web pages on which sunlamp products are offered for sale, a legible reproduction (color optional) of the warning statement required by paragraph (d)(1)(i) of this section.

(f) *Test for determination of compliance.* Tests on which certification under § 1010.2 of this chapter is based shall account for all errors and statistical uncertainties in the process and, wherever applicable, for changes in radiation emission or degradation in radiation safety with age of the sunlamp product. Measurements for certification purposes shall be made under those operational conditions, lamp voltage, current, and position as recommended by the manufacturer. For these measurements, the measuring instrument shall be positioned at the recommended exposure position and so oriented as to result in the maximum detection of the radiation by the

instrument. The performance requirements for the measuring instrument specified in IEC 60335-2-27, Ed. 5.0 Clause 32.101, which is incorporated by reference, shall apply.

(g) *Modification of certified sunlamp products.* The modification of a sunlamp product, previously certified under § 1010.2 of this chapter, constitutes manufacturing under the Federal Food, Drug, and Cosmetic Act if the modification affects any aspect of the product's performance or intended function(s) for which this section has an applicable requirement. The person who performs such modification shall recertify and re-identify the sunlamp product in accordance with the provisions of §§ 1010.2 and 1010.3 of this chapter.

(h) *Medical device classification regulation.* Sunlamp products and ultraviolet lamps intended for use in sunlamp products are subject to special controls and restrictions on sale, distribution, and use as set forth in § 878.4635 of this chapter.

(i) *Incorporation by reference.* The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the Food and Drug Administration, Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and is available from the following sources. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

(1) American National Standards Institute (ANSI), 1889 L St. NW., 11th Floor, Washington, DC 20036, [storemanager@ansi.org](mailto:storemanager@ansi.org), [www.ansi.org](http://www.ansi.org), 202-293-8020.

(i) ANSI C81.10-1976, "Specifications for Electric Lamp Bases and Holders—Screw-Shell Types," dated September 1976.

(ii) [Reserved]

(2) International Electrotechnical Commission (IEC), EC Central Office, 3 rue de Varembe, CH-1211 Geneva 20, Switzerland, [www.iec.ch](http://www.iec.ch), call 41-22-919-02-11.

(i) IEC 60335-2-27, Ed. 5.0: 2009-12, "Household and Similar Electrical Appliances—Safety—Part 2-27: Particular Requirements for Appliances for Skin Exposure to Ultraviolet and Infrared Radiation," dated December 2009.

(ii) IEC 61228, Ed. 2.0, "Fluorescent Ultraviolet Lamps Used for Tanning—Measurement and Specification Method," dated January 2008.

Dated: December 16, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015-32023 Filed 12-18-15; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 655

[FHWA Docket No. FHWA-2015-0028]

#### National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Request for Comment

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Request for Comments (RFC).

**SUMMARY:** The Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) is incorporated in our regulations, approved by FHWA, and recognized as the national standard for traffic control devices used on all streets, highways, bikeways, and private roads open to public travel. This document asks for responses to a series of questions regarding the future direction of the MUTCD. Specific topic areas include target audience/intended user, content and organization, process for introducing new traffic control devices, and frequency of MUTCD editions.

**DATES:** Comments must be received on or before February 18, 2016.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, or fax comments to (202) 493-2251. Alternatively, comments may be submitted to the Federal eRulemaking portal at <http://www.regulations.gov>. All comments must include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments

electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). Anyone may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78).

**FOR FURTHER INFORMATION CONTACT:** For questions about the program discussed herein, contact Mr. Kevin Sylvester, MUTCD Team Leader, FHWA Office of Transportation Operations, (202) 366–2161, or via email at [Kevin.Sylvester@dot.gov](mailto:Kevin.Sylvester@dot.gov). For legal questions, please contact Mr. William Winne, Office of the Chief Counsel, (202) 366–1397, or via email at [william.winne@dot.gov](mailto:william.winne@dot.gov). Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

#### **SUPPLEMENTARY INFORMATION:**

##### **Electronic Access and Filing**

You may submit or retrieve comments online through the Federal eRulemaking portal at: <http://www.regulations.gov>. The Web site is available 24 hours each day, 365 days each year. Please follow the instructions. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: <http://www.archives.gov> and the Government Printing Office's Web page at: <http://www.access.gpo.gov/nara>. Anyone is able to search the electronic form of all comments in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78), or you may visit <http://DocketsInfo.dot.gov>.

##### **Purpose of This Notification**

The FHWA is interested in planning for future editions of the MUTCD<sup>1</sup> that will reflect the growing number and application of traffic control devices, changes in technology not only for traffic control devices, but for viewing content in the MUTCD, and developing a structure for the MUTCD that is efficient and easy to use. The FHWA initiated the public comment process by

publishing an RFC at 78 FR 2347 (Docket ID: FHWA–2012–0118) on January 11, 2013, that included two options for restructuring the MUTCD and several questions regarding content and public use of the MUTCD. The FHWA's response to the comments, issued June 17, 2013 at 78 FR 36132 (Docket ID: FHWA–2012–0118–0187), indicated that over one half of the commenters recommended postponing any action to restructure the manual pending results from the ongoing National Cooperative Highway Research Program (NCHRP) strategic planning effort.<sup>2</sup> That effort is now complete.

The purpose of this notice is to solicit comments from users of the MUTCD about the direction of future editions of the MUTCD. This notice includes a set of specific questions for which FHWA requests comments. Comments and input may be offered on any part of this notification.

##### **Background**

The MUTCD is incorporated by reference within Federal regulations at 23 CFR part 655, approved by FHWA, and recognized as the national standard for traffic control devices used on all public roads. The MUTCD was incorporated by reference into the Code of Federal Regulations beginning with the publication of the 1971 edition. There have been 10 editions of the MUTCD, beginning with the first edition in 1935. The current MUTCD is the 2009 Edition, incorporating Revisions 1 and 2, dated May 2012 and is available to the public at [http://mutcd.fhwa.dot.gov/kno\\_2009r1r2.htm](http://mutcd.fhwa.dot.gov/kno_2009r1r2.htm).

Over the last several years, the transportation community has expressed concern over several issues related to the MUTCD: (1) Size, (2) complexity in finding information, (3) amount/type of information in the MUTCD, and (4) timeframe required for new traffic control devices or applications to be incorporated. To begin to address these issues, FHWA published an RFC at 78 FR 2347 (Docket ID: FHWA–2012–0118) on January 11, 2013, requesting comment on a potential restructuring of the MUTCD into two documents: The MUTCD and an Applications Supplement (herein referred to as “Restructuring RFC”). The FHWA's response to the comments, issued June 17, 2013, at 78 FR 36132 (Docket ID: FHWA–2012–0118–0187), indicated that given the lack of support from the MUTCD user community,

FHWA would not proceed with restructuring the MUTCD into two documents. As discussed in the response to comments, more than 90 percent of the docket letters were either against splitting the MUTCD into two separate documents (approximately 56 percent of responses), or recommended postponing any action to split the manual pending results from the ongoing NCHRP strategic planning effort (approximately 34 percent of responses), which was expected to be available in January 2014. The strategic planning effort was to address many issues that would impact future MUTCD content and structure, including consideration of an MUTCD that would consist of more than one volume. In addition to requesting that FHWA wait for the results of the NCHRP strategic planning effort, many State and local agencies, associations, and consultants suggested that if a decision were to be made to restructure the MUTCD in any significant way, it would be critical for FHWA to partner with stakeholders to develop content for a restructured MUTCD.

The NCHRP task to which the commenters were referring, NCHRP 20–07/Task 323, is now complete. The objective of the task was to develop a long-range Vision and Strategic Plan for the MUTCD. The plan was delivered to the American Association of State Highway and Transportation Officials' Highway Subcommittee on Traffic Engineering, which approved it by ballot, and then to the National Committee on Uniform Traffic Control Devices (NCUTCD) where that organization adopted the plan (herein referred to as the Vision and Strategic Plan) at its January 2014 meeting.<sup>3</sup> The Vision and Strategic Plan contains a discussion of opinions, challenges, needs and questions followed by a presentation of a vision for the MUTCD of the mid-2030s. To achieve that vision, the document includes a strategic plan for transitioning from the current edition to future editions through a series of incremental changes. With the NCHRP effort now complete, and in response to comments from the Restructuring RFC, FHWA believes it is now appropriate for a wider audience of MUTCD users to provide comments to FHWA on the direction of future editions of the MUTCD. It is important to note that FHWA is not seeking comments on the Vision and Strategic

<sup>1</sup> The 2009 edition of the MUTCD can be accessed at the following Internet Web site: <http://mutcd.fhwa.dot.gov>.

<sup>2</sup> NCHRP 20–07/Task 323, Developing a Long-Range Strategic Plan for the MUTCD, can be accessed at the following Internet Web site: <http://apps.trb.org/cmsfeed/TRBNetProjectDisplay.asp?ProjectID=3203>.

<sup>3</sup> The NCUTCD's January 9, 2014, 20-Year Vision and Strategic Plan for the Manual on Uniform Traffic Control Devices can be viewed at the following Internet Web site: <http://www.ncutcd.org/doc/MUTCD-20%20Year%20Vision%20NCUTCD%20Appvd%201-9-14%20FINAL.pdf>.

Plan document itself. Nor is FHWA seeking comment on any specific proposals for change.

Concurrent with this effort, FHWA is preparing a Notice of Proposed Amendments (NPA) for the next edition of the MUTCD. The publication date of the NPA is not yet known. Depending on the nature and extent of comments submitted for this RFC, FHWA may incorporate some of the suggestions in the next edition of the MUTCD. More importantly, FHWA is looking to begin planning for MUTCD editions further into the future with the comments submitted for this RFC.

As discussed above, the public may submit comments online through the Federal eRulemaking portal at: <http://www.regulations.gov>. In an effort to streamline the process for organizing and reviewing docket comments, the public is invited to submit comments in a spreadsheet that has been specifically developed for this notice. The spreadsheet is available for review and download on <http://www.regulations.gov> under the docket number listed in the heading of this document. Commenters who wish to use the spreadsheet for their comments are encouraged to download and fill in the spreadsheet, then upload the completed file as indicated in comment instructions. Alternatively, commenters may submit their comments in the comment box and/or via uploading a different file.

#### *Topic Area 1: Target Audience/Intended User*

Over the years, the MUTCD has expanded in size, due in part to the belief that the MUTCD needs to contain information that is appropriate for all its users. The size and complexity of the MUTCD have significantly increased primarily because of an expansion of the number of devices included in the MUTCD and the desire to provide more specifics in conveying the intent of the language in order to avoid uncertainty. The first edition of the MUTCD, published in 1935, had 166 pages, whereas the current MUTCD contains 820 pages of technical provisions. As discussed in the Restructuring RFC in 2012, FHWA is interested in examining ways to simplify and streamline the MUTCD in a manner that is most user-friendly, while maintaining the appropriate amount of information.

The MUTCD is used by a wide audience, from State, local, and consulting traffic engineers, to traffic control device technicians, and to some extent, the public. The Vision and Strategic Plan suggests that the size and the complexity of the MUTCD may be

reduced by targeting the MUTCD to a more specific audience or organizing it to provide information for different types of users. While FHWA understands that the MUTCD has gained a wide audience, writing or organizing the MUTCD accordingly may be cumbersome and may not have the intended result of simplifying the MUTCD. The MUTCD is currently designed as an engineering reference manual.

#### Topic Area 1 Questions

1A. Should MUTCD content continue to be written with a traffic engineer as the intended audience?

#### *Topic Area 2: Simplifying and Reorganizing the MUTCD*

As indicated above, FHWA previously issued the Restructuring RFC to identify potential options for simplifying the MUTCD. Comments were not in favor of splitting the MUTCD into two separate documents and many suggested waiting on the results of the Vision and Strategic Plan before determining whether or not the MUTCD should be restructured in a significant way.

In addition to simplifying, FHWA is exploring several of the reorganizing suggestions received from the Restructuring RFC. The current structure of the MUTCD is based on the type of device and the specialized application of devices. The 2009 edition includes Parts 1 through 4 for types of devices and Parts 5 through 9 for specialized applications of devices. This has been the basic structure of the MUTCD since its inception. In the 2000 edition, FHWA added the current headings of content (Standard, Guidance, Option, and Support paragraphs). The headings provide a clear level of mandate associated with specific content. However, this division by level of mandate can create challenges in providing text that reads well and flows together.

In order to provide greater flexibility in the MUTCD, the Vision and Strategic Plan recommends an additional level of mandate that would include two versions of Standard statements rather than one. Both types would be requirements, but one level would relate to uniformity while the other would relate to consistency. The uniformity Standard would require the same action in every case and would not allow for deviation based on site conditions. The consistency Standard would require the same action in every case unless a deviation was warranted to accommodate local conditions. The meanings of Guidance (recommended) and Option (permissible) provisions

would remain unchanged. The FHWA believes that this concept is not viable for several reasons. First, it would tend to make the MUTCD more complex rather than less complex. Second, because both conditions would be requirements, it is not likely that any legal distinction could be made between the two. The provisions of the current MUTCD do not preclude the application of engineering considerations.

Coordination within the MUTCD regarding the use of related devices at a single location is often limited. An MUTCD user that is trying to make decisions regarding aspects of traffic control devices used at a specific location might need to reference several different portions of the MUTCD to determine the optimal combination of devices and device features. For example, to review all provisions related to crosswalks, a reader could potentially need to consider Parts 2, 3, 4, 6, 7, 8, and 9, depending on the extent to which the design involves the basic devices of signs, markings, and signals; and specialized applications such as temporary traffic control, school zones, rail grade crossings, and shared-use paths. Cross referencing within the MUTCD is usually provided as appropriate to direct users to related provisions in other Sections or Parts of the MUTCD.

The tendency for future editions of the MUTCD is likely to expand the amount of content, potentially exacerbating the difficulty in using and finding information in the MUTCD. The FHWA is seeking comment to assess options for structuring the MUTCD to make it easier to use. The following are potential options for simplifying and reorganizing the MUTCD:

a. Maintain the current structure and format of the MUTCD.

b. Reorganize the MUTCD content. Potential reorganization structures include:

i. Traffic control devices by application. Parts 2, 3, and 4 in the current MUTCD would be combined to address applications such as urban intersections, rural highways, and collector streets. These applications would address the use of signs, markings, and signals within that context. Parts 5–9 of the current MUTCD currently use this approach. Such a structure would provide most of the content needed for a given application in a consolidated location within the MUTCD.

ii. By level of mandate (e.g., Standard and Guidance). Separating Standard, Guidance, Option, and Support provisions within each section may help MUTCD users find information more

easily. For example, more experienced MUTCD users may only need to review specific requirements and would want to review only the Standard and Guidance provisions.

iii. By MUTCD user (e.g., field personnel and engineers). Field personnel typically focus on the field location, installation, and inspection of traffic control devices. Engineers and technicians typically focus on the overall design, operations, and context of a traffic control device in relation to the transportation facilities and other traffic control devices. Consolidating provisions related to user types may simplify the MUTCD for those individuals.

c. Relocate some of the content from the MUTCD into a companion document that has a similar structure as the MUTCD. The companion document would not contain requirements and could be revised without the rulemaking process. This restructuring would take place in a future edition, not the next edition.

i. The restructured MUTCD could include traffic control device standards that do not change such as the meaning, appearance, and other key standards.

ii. The companion document could include traffic control device guidelines that relate to selection, location, operation, and maintenance of devices. The companion document would need to be developed through a consensus-building process that involves appropriate stakeholders with expertise in the use of traffic control devices. The companion document could be revised more frequently than the MUTCD, because it would not be subject to rulemaking.

#### Topic Area 2 Questions

2A. In future editions, should FHWA strive to reduce the amount of explanatory language included in the MUTCD?

2B. If so, what types of explanatory language should be removed from the MUTCD?

2C. If explanatory/supplementary information is removed, should it be retained in a separate document?

2D. What organizational structure should be considered for future MUTCDs? Potential alternatives include:

- a. Current structure.
- b. Application information (e.g., urban intersections, rural highways, and collector streets).
- c. By type of information (design and applications, installation, maintenance).
- d. Other.

2E. If a different format is not appropriate, what potential alternatives/

tools would help users more easily find information?

2F. As we move toward more electronic use of the MUTCD through computers, tablets, and handheld devices, what additional electronic formats or tools would be useful?

#### Topic Area 3: MUTCD Edition Frequency

There have been 10 editions of the MUTCD (1935, 1942, 1948, 1961, 1971, 1978, 1988, 2000, 2003, and 2009). Timing of revisions of individual editions has varied, with most editions having a limited number of revisions between editions.

Changes to the MUTCD are made through the rulemaking process because the manual is regulatory in nature. Major changes to the MUTCD are incorporated and added through the publication of new editions of the manual. Occasionally, there is a need to initiate special rulemakings between editions of the MUTCD to incorporate important content without waiting for the next edition of the MUTCD. These are called "Revisions" and are incorporated into the official MUTCD on FHWA's MUTCD Web site. In between editions or revisions of the MUTCD, new traffic control devices or applications can be approved for use through the official experimentation and interim approval processes, as described in Section 1A.10 of the MUTCD.<sup>4</sup> Information regarding these experimentations and interim approvals is also posted on FHWA's MUTCD Web site.

Developing technical content for inclusion in the MUTCD is a deliberative process. Material associated with new traffic control devices is based on laboratory and/or in-service research evaluations that consider the human factors and performance aspects of the device, which can take several years. The results are then used to develop technical provisions related to that device that can then be considered for a rulemaking activity to amend the MUTCD. The rulemaking process involves publishing a proposed revision for public comment, analyzing the public comments submitted to the docket, and then publishing a final rule that addresses the public comments. For a new edition of the MUTCD, this process typically takes approximately 2 years from the publication of the proposed rulemaking document to the final rule. After the final rule, States have up to 2 years to adopt the new

MUTCD or their State equivalent. Given this timeline, it would be impractical to publish new editions of the MUTCD with significant new content at intervals less frequent than 6 years. The next edition of the MUTCD is currently targeted for publication in late 2018, representing 9 years between new editions.<sup>5</sup>

Currently, 18 States adopt the national MUTCD as their standard, without any supplement. Ten States develop their own MUTCD based on the national MUTCD. Twenty-two States and the District of Columbia and Puerto Rico develop supplements to the national MUTCD.

Developing supplements to the national MUTCD and developing State-specific MUTCDs is likely to be costly to the States and introduces a potential for conflicts with the national MUTCD. State agency resources are already provided to review and comment on national MUTCD rulemaking and many State agencies support their staff member participation in the NCUTCD meetings and activities. As a result, FHWA would like to better understand why States develop their own MUTCDs or supplements. The FHWA believes that a better understanding of why States develop their own MUTCDs could better inform the development of future editions of the national MUTCD. It should be noted that FHWA is not discouraging States from developing their own MUTCDs or supplements.

The FHWA is interested in comments related to the timing of new editions of the MUTCD and intermediate revisions of the MUTCD between editions, as well as the information about the development of State MUTCDs and supplements.

3A. If the minimum practical interval between editions is 6 to 8 years, should FHWA promulgate rulemakings to issue one or more revisions that are focused on individual traffic control devices between new editions of the MUTCD?

3B. What about the national MUTCD or State law makes it necessary for some States to develop their own MUTCDs or supplements?

3C. Is there anything in the national MUTCD that could be changed to reduce the burden for States to review, revise, prepare, and adopt their own State MUTCD or supplement?

**Authority:** 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315, and 402(a); 23 CFR 1.32; and, 49 CFR 1.85.

<sup>4</sup> Section 1A.10 of the MUTCD can be viewed at the following Internet Web link: <http://mutcd.fhwa.dot.gov/pdfs/2009r1r2/mutcd2009r1part1.pdf>.

<sup>5</sup> Revisions 1 and 2 to the 2009 MUTCD were published in May 2012.

Issued on: December 10, 2015.

**Gregory G. Nadeau,**

*Administrator, Federal Highway Administration.*

[FR Doc. 2015-32107 Filed 12-21-15; 8:45 am]

BILLING CODE 4910-22-P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 235

[Docket ID: DOD-2013-OS-0220]

RIN 0790-AJ15

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

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

**ACTION:** Proposed rule.

**SUMMARY:** This rulemaking codifies in the Code of Federal Regulations the policy 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 based on 10 U.S.C. 2495b. It also establishes the Resale Activities Review Board (referred to in this rule as the “Board”).

**DATES:** Comments must be received by February 22, 2016.

**ADDRESSES:** You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301-9010.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ryan Atkins, 703-588-0619.

**SUPPLEMENTARY INFORMATION:** Revisions to the rulemaking will be reported in

future status updates as part of DoD’s retrospective plan under Executive Order 13563 completed in August 2011. DoD’s full plan can be accessed at: <http://www.regulations.gov/#!docketDetail;D=DOD-2011-OS-0036>.

#### Executive Summary

10 U.S.C. 2495b prohibits the sale or rental of sexually explicit material on property under DoD jurisdiction. The section also requires DoD to establish the Resale Activities Review Board (the Board) to review material offered for sale or rental on property under DoD jurisdiction and to make recommendations to the Secretary of Defense, in accordance with section 2495b. Any material that is determined to be sexually explicit, as defined by section 2495b, is not offered and if materials are already on store shelves, they are removed.

This proposed rule will cost the DoD approximately \$5,500 annually for the life of the rule to manage the Board. It is anticipated that the costs will recur for the life of the proposed rule varying for inflation. 10 U.S.C. 2495b authorizes Board members travel expenses while away from their homes or regular places of business in the performance of services for the Board. DoD implemented section 2495b by issuing DoD Instruction (DoDI) 4105.70, “Prohibition of the Sale or Rental of Sexually Explicit Material on DoD Property” (the Instruction). This instruction is available on the Internet from the DoD Issuances Web site at <http://www.dtic.mil/whs/directives>. The Instruction established DoD policy that prohibits the sale or rental of sexually explicit material on property under DoD jurisdiction, and no Service member or DoD civilian employee, acting in his or her official capacity, will provide for sale, remuneration, or rental any sexually explicit material to another person. This proposed rule facilitates DoD’s compliance with the requirements of 10 U.S.C. 2495b and fulfills the requisite public notification of the DoD process to implement this statutory requirement.

#### Regulatory Procedures

*Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”*

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, this proposed rule has been reviewed by the Office of Management and Budget.

*Sec. 202, Public Law 104-4, “Unfunded Mandates Reform Act”*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately \$141 million. This proposed rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

*Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. 601)*

The Department of Defense certifies that this proposed rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

*Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)*

It has been certified that 32 CFR part 235 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

*Executive Order 13132, “Federalism”*

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule will not have a substantial effect on State and local governments.

#### List of Subjects in 32 CFR Part 235

Business and industry, Concessions, Government contracts, Military personnel.