

“*B. Short-Term Deferrals*”, first paragraph of the column, last of the paragraph, the language, “in year 10.” is corrected to read “in Year 10.”.

4. On page 57934, column 2, in the preamble under the paragraph heading “*2. Definition of Service Recipient Stock*”, second paragraph of the column, fourth line, the language, “provider stock may include American” is corrected to read “recipient stock may include American”.

5. On page 57937, column 1, in the preamble under the paragraph heading “*D. Restricted Property*”, second paragraph of the column, line 21, the language, “payment for purposes section 409A,” is corrected to read “payment for purposes of section 409A.”.

6. On page 57948, column 2, in the preamble under the paragraph heading “*E. Change in Ownership or Effective Control of the Corporation*”, last paragraph of the column, line 13, the language, “3(g)(5)(iv)) or a change in the ownership” is corrected to read “3(g)(5)(v)) or change in the ownership”.

7–8. On page 57948, column 3, in the preamble under the paragraph heading “*E. Change in Ownership or Effective Control of the Corporation*”, first paragraph of the column, line 2, the language “§ 1.409A–3(g)(5)(vi) may be applied by” is corrected to read “§ 1.409A–3(g)(5)(vii) may be applied by”.

9. On page 57953, column 1, in the preamble under the “*B. Effective Dates—Calculation of Grandfathered Amount*”, first paragraph, line 7, the language, “set forth in Notice 2005–1, Q&A–16.” is corrected to read “set forth in Notice 2005–1, Q&A,–17.”.

10. On page 57953, column 2, in the preamble under the “*B. Effective Dates—Calculation of Grandfathered Amount*”, first full paragraph, line 3, the language, “contained in Notice 2005–1, Q&A–16” is corrected to read “contained in Notice 2005–1, Q&A,–17”.

#### § 1.409A–1 [Corrected]

11. On page 57959, column 2, § 1.409A–1(b)(4)(i), line 5, the language, “election under § 1.409A–2(a)(4) to” is corrected to read “election under § 1.409A–2(a)(3) to”.

12. On page 57961, column 1, § 1.409A–1(b)(5)(iii)(B), last line of the paragraph, the language, “service provider stock.” is corrected to read “service recipient stock.”.

13. On page 57961, column 2, § 1.409A–1(b)(5)(iii)(D)(1), line 25, the language, “constitute service provider stock with” is corrected to read

“constitute service recipient stock with”.

14. On page 57962, column 2, § 1.409A–1(b)(5)(iv)(B)(2)(iii), line 5, the language, “(b)(5)(B)(iv)(1) of this section, of an” is corrected to read “(b)(5)(iv)(B)(1) of this section, of an”.

15. On page 57962, column 2, § 1.409A–1(b)(5)(iv)(B)(2)(iii), lines 5 and 6 from the bottom of the paragraph, the language, “§ 1.409A–3(g)(5)(iv) or § 1.409A–3(g)(5)(vi) or make a public offering of” is corrected to read “§ 1.409A–3(g)(5)(v) or § 1.409A–3(g)(5)(vii) or make a public offering of”.

16. On page 57962, column 3, § 1.409A–1(b)(5)(iv)(B)(3), line 9 from the bottom of the paragraph, the language, “the service provider stock to which the” is corrected to read “the service recipient stock to which the”.

17. On page 57963, column 2, § 1.409A–1(b)(5)(v)(E), line 7, the language, “exercised is not a material modification” is corrected to read “exercised is not a modification”.

18. On page 57963, column 2, § 1.409A–1(b)(5)(v)(E), line 13, the language, “§ 1.409A–3(c). Additionally, no” is corrected to read “§ 1.409A–3(h). Additionally, no”.

19. On page 57964, column 1, § 1.409A–1(b)(v)(J)(6)(ii), line 14, the language, “purposes section 409A, including for” is corrected to read “purposes of section 409A, including for”.

20. On page 57964, column 2, § 1.409A–1(b)(v)(J)(8)(ii)(B), line 7, the language, “the compensation would have been” is corrected to read “and the compensation would have been”.

21. On page 57965, column 1, § 1.409A–1(b)(v)(9)(iii)(A)(1), line 3, the language, § 1.415–1(d)(2) for services provided to” is corrected to read “§ 1.415–2(d) for services provided to”.

22. On page 57965, column 1, § 1.409A–1(b)(v)(9)(iii)(A)(1), line 7, the language, “1402(a)(1) for services provided to the” is corrected to read “1402(a) for services provided to the”.

23. On page 57968, column 1, § 1.409A–1(f)(3)(i)(C), last line of the paragraph, the language, “sections 267(b)(1) and 707(b)(1).” is corrected to read “sections 267(b) and 707(b)(1).”.

24. On page 57969, column 1, § 1.409A–1(h)(2)(ii), line 2, the language, “paragraph (b)(2) of this section, the plan” is corrected to read “paragraph (h)(2)(i) of this section, the plan”.

25. On page 57969, column 1, § 1.409A–1(h)(2)(ii), lines 4 through 8, the language, “described in paragraph (a) of this section that no amounts deferred under the plan be paid or made available to the participant before the

participant has a separation from service with the” is corrected to read “described in § 1.409A–3(a)(1) that amounts deferred under the plan may be paid or made available to the participant upon a separation from service with the”.

#### § 1.409A–2 [Corrected]

26. On page 57971, column 3, § 1.409A–2(a)(9), line 3, the language, “1(b)(9)(i) due to an actual involuntary” is corrected to read “1(m) due to an actual involuntary”.

27. On page 57973, column 1, § 1.409A–2(b)(3), line 5, the language, “contained in § 1.409A–3(c), the” is corrected to read “contained in § 1.409A–3(h), the”.

#### § 1.409A–3 [Corrected]

28. On page 57975, column 3, § 1.409A–3(b), line 26, the language, “§ 1.409A–1(b)(4). An arrangement may” is corrected to read “§ 1.409A–2(b). An arrangement may”.

29. On page 57977, column 2, § 1.409A–3(g)(3)(i), line 12 from the top of the column, the language, “insurance, for example, not as a result” is corrected to read “insurance, for example, as a result”.

30. On page 57977, column 3, § 1.409A–3(g)(4)(i)(A), line 6, the language, “result in death or can be expected to last” is corrected to read “result in death or can be expected to last”.

31. On page 57981, column 1, § 1.409A–3(h)(4)(viii)(B), line 6, the language, “defined in § 1.409A–2(g)(4)(i). For” is corrected to read “defined in § 1.409A–3(g)(5)(i). For”.

Guy R. Traynor,

*Federal Register Liaison, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

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BILLING CODE 4830–01–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 235

RIN 0790–AH86

#### Sale of Rental of Sexually Explicit Material on DoD Property (DoD Instruction 4105.70)

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise DoD regulations to prohibit the sale or rental of sexually explicit material on

property under DoD jurisdiction. It establishes responsibilities for monitoring compliance, establishes a review board to determine whether a material offered for sale or rental is sexually explicit as consistent with the definition in 10 U.S.C. 2489a, and delineates review board procedures.

**DATES:** Consideration will be given to all comments received on or before February 17, 2006.

**ADDRESSES:** Forward comments to Deputy Under Secretary of Defense (Military Community and Family Policy), 4000 Defense Pentagon, Washington, DC 20301-4000.

**FOR FURTHER INFORMATION CONTACT:** Commander F. Stich, 703-602-4590.

**SUPPLEMENTARY INFORMATION:**

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

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

Accordingly, title 32 of the Code of Federal Regulations is proposed to be amended by revising Part 235 to read as follows:

**PART 235—SALE OR RENTAL OR SEXUALLY EXPLICIT MATERIAL ON DOD PROPERTY (DOD INSTRUCTION 4105.70)**

Sec.

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

**Authority:** 10 U.S.C. 2489a.

**§ 235.1 Purpose.**

This part:

(a) Revises 32 CFR part 235 under the authority of the Secretary of Defense memorandum dated November 14, 1996 and the Under Secretary of Defense (USD (P&R)) memorandum dated December 6, 1996.

(b) Implements 10 U.S.C. 2489a, consistent with DoD Directive 1330.9<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.**

*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 Department of Defense.* Commissaries, facilities operated by the Army and Air Force Exchange Service, the Navy Exchange Service Command, the Navy Resale and Serves 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)), 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, 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 Resale Activities Board of Review.

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

(b) The Secretaries of the Military Departments shall ensure their respective component DoD resale activities comply with this part and may 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 have the authority and responsibility periodically to review material offered or to be offered for sale or rental on property under DoD jurisdiction, and to 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 instructions issued under 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 provide instructions to purchasing agents and managers of retail outlets about the purchase, withdrawal and return of sexually explicit material. The Board may also provide guidance to purchasing agents and managers of

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

retail outlets about material that it has determined is not sexually explicit. Purchasing agents and managers of retail outlets shall continue to follow their usual purchasing and stocking practices unless instructed otherwise by the Board.

(f) material which has been determined by the Board to be sexually explicit may be submitted 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.

#### § 235.7 Information requirements.

The Chair, Resale Activities Board of Review, shall submit to the PDUSD (P&R) an annual report documenting the activities, decisions, and membership of the Board. Negative reports are required. The annual report shall be due on October 1st of each year. The annual report required by this part is exempt from licensing. Licensing requirements are contained in DoD 8910.1-M.<sup>2</sup>

Dated: December 13, 2005.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R07-OAR-2005-MO-0007; FRL-8009-6]

#### Finding of Substantial Inadequacy of Implementation Plan; Call for Missouri State Implementation Plan Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to our authority in the Clean Air Act to call for plan revisions, EPA is proposing to find that the Missouri State Implementation Plan for lead is substantially inadequate to attain or maintain the National Ambient Air Quality Standard for lead in the portion of Jefferson County within the city limits of Herculaneum, Missouri. The specific State Implementation Plan deficiencies, which form the basis for this proposed finding, are described below. If EPA finalizes this proposed finding of substantial inadequacy, Missouri will be required to revise its State Implementation Plan to correct these deficiencies by a date which will

be specified in the final rule. If the state fails to submit a revised State Implementation Plan by the deadline, it will be subject to sanctions under the provisions of the Clean Air Act.

**DATES:** Comments must be received on or before January 18, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R07-OAR-2005-MO-0007, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. E-mail: *algoe-eakin.amy@epa.gov*.
3. Mail: Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. Hand Delivery or Courier. Deliver your comments to: Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

**Instructions:** Direct your comments to Docket ID No. EPA-R07-OAR-2005-MO-0007. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket.** All documents in the electronic docket are listed in the

*www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Amy Algoe-Eakin at (913) 551-7942 or by e-mail at *algoe-eakin.amy@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is the background for Doe Run-Herculaneum?

What is the basis for the proposed finding? How can Missouri correct the inadequacy and when must the correction be submitted?

What action is EPA proposing?

*What is the background for Doe Run-Herculaneum?*

EPA established the National Ambient Air Quality Standard (NAAQS) for lead on October 5, 1978 (43 FR 46246). The standard for lead is set at a level of 1.5 micrograms ( $\mu\text{g}$ ) of lead per cubic meter ( $\text{m}^3$ ) of air, averaged over a calendar quarter.

During the 1980s and 1990s, Missouri submitted and EPA approved a number of SIP revisions for lead to address ambient lead problems in various areas of the state. One such area was in Herculaneum, Missouri, which is the site of the Doe Run primary lead smelter. Doe Run-Herculaneum is the largest and only currently operating primary lead smelter in the United States.

The city of Herculaneum was designated nonattainment for lead in 1991 (40 CFR 81.326), pursuant to new authorities provided by the Clean Air Act Amendments of 1990 (CAA or Act), and the state became subject to new State Implementation Plan (SIP) requirements in part D, Title I of the Act, added by the 1990 amendments. A revised SIP meeting the part D requirements was subsequently

<sup>2</sup> See footnote 1 Sec. 235.1(b).