

106-398, §1 [[div. A], title III, §331(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-59; Pub. L. 108-136, div. A, title VI, §654, Nov. 24, 2003, 117 Stat. 1523; renumbered §2483, Pub. L. 108-375, div. A, title VI, §651(a)(2), (4), Oct. 28, 2004, 118 Stat. 1964, 1966; Pub. L. 114-328, div. A, title VI, §661(b), Dec. 23, 2016, 130 Stat. 2169.)

PRIOR PROVISIONS

A prior section 2483, added Pub. L. 107-107, div. A, title III, §332(a), Dec. 28, 2001, 115 Stat. 1058, related to reimbursement for use of commissary facilities by military departments, prior to repeal by Pub. L. 108-375, div. A, title VI, §651(a)(1), Oct. 28, 2004, 118 Stat. 1964.

Another prior section 2483 was renumbered section 2916 of this title.

Provisions similar to those in this section were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98-473, title I, §101(h) [title VIII, §8010], 98 Stat. 1904, 1924.

Dec. 8, 1983, Pub. L. 98-212, title VII, §713, 97 Stat. 1440.

Dec. 21, 1982, Pub. L. 97-377, title I, §101(c) [title VII, §714], 96 Stat. 1833, 1852.

Dec. 29, 1981, Pub. L. 97-114, title VII, §714, 95 Stat. 1580.

Dec. 15, 1980, Pub. L. 96-527, title VII, §715, 94 Stat. 3083.

Dec. 21, 1979, Pub. L. 96-154, title VII, §715, 93 Stat. 1155.

Oct. 13, 1978, Pub. L. 95-457, title VIII, §815, 92 Stat. 1246.

Sept. 21, 1977, Pub. L. 95-111, title VIII, §814, 91 Stat. 902.

Sept. 22, 1976, Pub. L. 94-419, title VII, §714, 90 Stat. 1293.

Feb. 9, 1976, Pub. L. 94-212, title VII, §714, 90 Stat. 171.

Oct. 8, 1974, Pub. L. 93-437, title VIII, §814, 88 Stat. 1227.

Jan. 2, 1974, Pub. L. 93-238, title VII, §714, 87 Stat. 1040.

Oct. 26, 1972, Pub. L. 92-570, title VII, §714, 86 Stat. 1198.

Dec. 18, 1971, Pub. L. 92-204, title VII, §714, 85 Stat. 729.

Jan. 11, 1971, Pub. L. 91-668, title VIII, §814, 84 Stat. 2032.

Dec. 29, 1969, Pub. L. 91-171, title VI, §614, 83 Stat. 482.

Oct. 17, 1968, Pub. L. 90-580, title V, §513, 82 Stat. 1132.

Sept. 29, 1967, Pub. L. 90-96, title VI, §613, 81 Stat. 244.

Oct. 15, 1966, Pub. L. 89-687, title VI, §613, 80 Stat. 993.

Sept. 29, 1965, Pub. L. 89-213, title VI, §613, 79 Stat. 875.

Aug. 19, 1964, Pub. L. 88-446, title V, §513, 78 Stat. 477.

Oct. 17, 1963, Pub. L. 88-149, title V, §513, 77 Stat. 266.

Aug. 9, 1962, Pub. L. 87-577, title V, §513, 76 Stat. 330.

Aug. 17, 1961, Pub. L. 87-144, title VI, §613, 75 Stat. 377.

July 7, 1960, Pub. L. 86-601, title V, §513, 74 Stat. 351.

Aug. 18, 1959, Pub. L. 86-166, title V, §613, 73 Stat. 380.

Aug. 22, 1958, Pub. L. 85-724, title VI, §613, 72 Stat. 725.

Aug. 2, 1957, Pub. L. 85-117, title VI, §614, 71 Stat. 325.

July 2, 1956, ch. 488, title VI, §614, 70 Stat. 469.

July 13, 1955, ch. 358, title VI, §617, 69 Stat. 317.

June 30, 1954, ch. 432, title VII, §717, 68 Stat. 353.

Aug. 1, 1953, ch. 305, title VI, §624, 67 Stat. 353.

July 10, 1952, ch. 630, title VI, §627, 66 Stat. 535.

Oct. 18, 1951, ch. 512, title VI, §628, 65 Stat. 449.

AMENDMENTS

2016—Subsec. (c). Pub. L. 114-328 inserted at end “Such appropriated amounts may also be supplemented with additional funds derived from improved management practices implemented pursuant to sections 2481(c)(3) and 2487(c) of this title and the variable pricing program implemented pursuant to section 2484(i) of this title.”

2004—Pub. L. 108-375 renumbered section 2484 of this title as this section.

2003—Subsec. (a). Pub. L. 108-136, §654(a)(1), substituted “shall” for “may”.

Subsec. (b). Pub. L. 108-136, §654(a)(2), substituted “shall” for “may” in introductory provisions.

Subsec. (c). Pub. L. 108-136, §654(b), added subsec. (c).

2000—Pub. L. 106-398 amended section catchline and text generally. Prior to amendment, text consisted of subsecs. (a) to (d) providing that funds available to the Department of Defense could be used to pay for certain costs in connection with the operation of commissary stores only on a reimbursable basis and allowed transportation and utilities to be furnished for the operation of those stores outside of the United States or in Alaska and Hawaii.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, §1 [[div. A], title III, §331(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-59, provided that: “The amendments made by this section [amending this section] shall take effect on October 1, 2001.”

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as a note under section 520b of this title.

§ 2484. Commissary stores: merchandise that may be sold; uniform surcharges and pricing

(a) IN GENERAL.—As provided in section 2481(a) of this title, commissary stores are intended to be similar to commercial grocery stores and may sell merchandise similar to that sold in commercial grocery stores.

(b) AUTHORIZED COMMISSARY MERCHANDISE CATEGORIES.—Merchandise sold in, at, or by commissary stores may include items in the following categories:

- (1) Meat, poultry, seafood, and fresh-water fish.
- (2) Nonalcoholic beverages.
- (3) Produce.
- (4) Grocery food, whether stored chilled, frozen, or at room temperature.
- (5) Dairy products.
- (6) Bakery and delicatessen items.
- (7) Nonfood grocery items.
- (8) Tobacco products.
- (9) Health and beauty aids.
- (10) Magazines and periodicals.

(c) INCLUSION OF OTHER MERCHANDISE ITEMS.—(1) The Secretary of Defense may authorize the sale in, at, or by commissary stores of merchandise not covered by a category specified in subsection (b). The Secretary shall notify Congress of all merchandise authorized for sale pursuant to this paragraph, as well as the removal of any such authorization.

(2) Notwithstanding paragraph (1), the Department of Defense military resale system shall continue to maintain the exclusive right to operate convenience stores, shopettes, and troop stores, including such stores established to support contingency operations.

(3)(A) A military exchange shall be the vendor for the sale of tobacco products in commissary stores and may be the vendor for such merchandise as may be authorized for sale in commissary stores under paragraph (1). Except as provided in subparagraph (B), subsections (d) and (e) shall not apply to the pricing of such an item when a military exchange serves as the vendor of the item. Commissary store and exchange prices shall be comparable for such an item.

(B) When a military exchange is the vendor of tobacco products or other merchandise authorized for sale in a commissary store under paragraph (1), any revenue above the cost of procuring the merchandise shall be allocated as if the revenue were a uniform sales price surcharge described in subsection (d).

(d) UNIFORM SALES PRICE SURCHARGE.—The Secretary of Defense shall apply a uniform surcharge equal to five percent on the sales prices established under subsection (e) for each item of merchandise sold in, at, or by commissary stores.

(e) SALES PRICE ESTABLISHMENT.—(1) The Secretary of Defense shall establish the sales price of each item of merchandise sold in, at, or by commissary stores at the level that will recoup the actual product cost of the item.

(2) Any change in the pricing policies for merchandise sold in, at, or by commissary stores shall not take effect until the Secretary of Defense submits written notice of the proposed change to Congress and a period of 90 days of continuous session of Congress expires following the date on which notice was received. For purposes of this paragraph, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment or recess of more than three days to a day certain are excluded in a computation of such 90-day period.

(3) The sales price of merchandise and services sold in, at, or by commissary stores shall be adjusted to cover the following:

(A) The cost of first destination commercial transportation of the merchandise in the United States to the place of sale.

(B) The actual or estimated cost of shrinkage, spoilage, and pilferage of merchandise under the control of commissary stores.

(f) PROCUREMENT OF COMMERCIAL ITEMS USING PROCEDURES OTHER THAN COMPETITIVE PROCEDURES.—The Secretary of Defense may use the exception provided in section 2304(c)(5) of this title for the procurement of any commercial item (including brand-name and generic items) for resale in, at, or by commissary stores.

(g) SPECIAL RULES FOR CERTAIN MERCHANDISE.—(1) Notwithstanding the general requirement that merchandise sold in, at, or by commissary stores be commissary store inventory, the Secretary of Defense may authorize the sale of tobacco products as noncommissary store inventory. Except as provided in paragraph (2), subsections (d) and (e) shall not apply to the pricing of such merchandise items.

(2) When tobacco products are authorized for sale in a commissary store as noncommissary store inventory, any revenue above the cost of procuring the tobacco products shall be allocated as if the revenue were a uniform sales price surcharge described in subsection (d).

(h) USE OF SURCHARGE FOR CONSTRUCTION, REPAIR, IMPROVEMENT, AND MAINTENANCE.—(1)(A) The Secretary of Defense may use the proceeds from the surcharges imposed under subsection (d) only—

(i) to acquire (including acquisition by lease), construct, convert, expand, improve, repair, maintain, and equip the physical infra-

structure of commissary stores and central product processing facilities of the defense commissary system; and

(ii) to cover environmental evaluation and construction costs related to activities described in clause (i), including costs for surveys, administration, overhead, planning, and design.

(B) In subparagraph (A), the term “physical infrastructure” includes real property, utilities, and equipment (installed and free standing and including computer equipment), necessary to provide a complete and usable commissary store or central product processing facility.

(2)(A) The Secretary of Defense may authorize a nonappropriated fund instrumentality of the United States to enter into a contract for construction of a shopping mall or similar facility for a commissary store and one or more nonappropriated fund instrumentality activities. The Secretary may use the proceeds of surcharges under subsection (d) to reimburse the nonappropriated fund instrumentality for the portion of the cost of the contract that is attributable to construction of the commissary store or to pay the contractor directly for that portion of such cost.

(B) In subparagraph (A), the term “construction”, with respect to a facility, includes acquisition, conversion, expansion, installation, or other improvement of the facility.

(3)(A) The Secretary of Defense may use the proceeds derived from surcharges imposed under subsection (d) in connection with sales of commissary merchandise through initiatives described in subparagraph (B) to offset the cost of such initiatives.

(B) Subparagraph (A) applies with respect to initiatives, utilizing temporary and mobile equipment, intended to provide members of reserve components, retired members, and other persons eligible for commissary benefits, but without reasonable access to commissary stores, improved access to commissary merchandise.

(4) The Secretary of Defense, with the approval of the Director of the Office of Management and Budget, may obligate anticipated proceeds from the surcharges under subsection (d) for any use specified in paragraph (1), (2), or (3), without regard to fiscal year limitations, if the Secretary determines that such obligation is necessary to carry out any use of such adjustments or surcharges specified in such paragraph.

(5) Revenues received by the Secretary of Defense from the following sources or activities of commissary store facilities shall be available for the purposes set forth in paragraphs (1), (2), and (3):

- (A) Sale of recyclable materials.
- (B) Sale of excess and surplus property.
- (C) License fees.
- (D) Royalties.

(E) Fees paid by sources of products in order to obtain favorable display of the products for resale, known as business related management fees.

(i) VARIABLE PRICING PROGRAM.—(1) Notwithstanding subsection (e), and subject to subsection (k), the Secretary of Defense may establish a variable pricing program pursuant to

which prices may be established in response to market conditions and customer demand, in accordance with the requirements of this subsection. Notwithstanding the amount of the uniform surcharge assessed in subsection (d), the Secretary may provide for an alternative surcharge of not more than five percent of sales proceeds under the variable pricing program to be made available for the purposes specified in subsection (h).

(2) Subject to subsection (k), before establishing a variable pricing program under this subsection, the Secretary shall establish the following:

(A) Specific, measurable benchmarks for success in the provision of high quality grocery merchandise, discount savings to patrons, and levels of customer satisfaction while achieving savings for the Department of Defense.

(B) A baseline of overall savings to patrons achieved by commissary stores prior to the initiation of the variable pricing program, based on a comparison of prices charged by those stores on a regional basis with prices charged by relevant local competitors for a representative market basket of goods.

(3) The Secretary shall ensure that the defense commissary system implements the variable pricing program by conducting price comparisons using the methodology established for paragraph (2)(B) and adjusting pricing as necessary to ensure that pricing in the variable pricing program achieves overall savings to patrons that are consistent with the baseline savings established for the relevant region pursuant to such paragraph.

(j) **CONVERSION TO NONAPPROPRIATED FUND ENTITY OR INSTRUMENTALITY.**—(1) Subject to subsection (k), if the Secretary of Defense determines that the variable pricing program has met the benchmarks for success established pursuant to paragraph (2)(A) of subsection (i) and the savings requirements established pursuant to paragraph (3) of such subsection over a period of at least six months, the Secretary may convert the defense commissary system to a nonappropriated fund entity or instrumentality, with operating expenses financed in whole or in part by receipts from the sale of products and the sale of services. Upon such conversion, appropriated funds shall be transferred to the defense commissary system only in accordance with paragraph (2) or section 2491 of this title. The requirements of section 2483 of this title shall not apply to the defense commissary system operating as a nonappropriated fund entity or instrumentality.

(2) If the Secretary determines that the defense commissary system operating as a nonappropriated fund entity or instrumentality is likely to incur a loss in any fiscal year as a result of compliance with the savings requirement established in subsection (i), the Secretary shall authorize a transfer of appropriated funds available for such purpose to the commissary system in an amount sufficient to offset the anticipated loss. Any funds so transferred shall be considered to be nonappropriated funds for such purpose.

(3)(A) The Secretary may identify positions of employees in the defense commissary system

who are paid with appropriated funds whose status may be converted to the status of an employee of a nonappropriated fund entity or instrumentality.

(B) The status and conversion of employees in a position identified by the Secretary under subparagraph (A) shall be addressed as provided in section 2491(c) of this title for employees in morale, welfare, and recreation programs, including with respect to requiring the consent of such employee to be so converted.

(C) No individual who is an employee of the defense commissary system as of the date of the enactment of this subsection shall suffer any loss of or decrease in pay as a result of a conversion made under this paragraph.

(k) **OVERSIGHT REQUIRED TO ENSURE CONTINUED BENEFIT TO PATRONS.**—(1) With respect to each action described in paragraph (2), the Secretary of Defense may not carry out such action until—

(A) the Secretary provides to the congressional defense committees a briefing on such action, including a justification for such action; and

(B) a period of 30 days has elapsed following such briefing.

(2) The actions described in this paragraph are the following:

(A) Establishing the representative market basket of goods pursuant to subsection (i)(2)(B).

(B) Establishing the variable pricing program under subsection (i)(1).

(C) Converting the defense commissary system to a nonappropriated fund entity or instrumentality under subsection (j)(1).

(Added Pub. L. 99-661, div. A, title III, §313(a), Nov. 14, 1986, 100 Stat. 3852, §2486; amended Pub. L. 100-180, div. A, title III, §313(a)(1), (2), Dec. 4, 1987, 101 Stat. 1073, 1074; Pub. L. 104-201, div. A, title III, §342(a), Sept. 23, 1996, 110 Stat. 2489; Pub. L. 105-85, div. A, title III, §§372(a)-(e), 373, Nov. 18, 1997, 111 Stat. 1706, 1707; Pub. L. 105-261, div. A, title III, §364, Oct. 17, 1998, 112 Stat. 1986; Pub. L. 106-65, div. A, title X, §1066(a)(21), Oct. 5, 1999, 113 Stat. 771; Pub. L. 106-398, §1 [[div. A], title III, §§332(a), 334], Oct. 30, 2000, 114 Stat. 1654, 1654A-59, 1654A-60; Pub. L. 107-314, div. A, title X, §1041(a)(14), Dec. 2, 2002, 116 Stat. 2645; renumbered §2484 and amended Pub. L. 108-375, div. A, title VI, §651(a)(2), (4), (5), Oct. 28, 2004, 118 Stat. 1964, 1966; Pub. L. 109-364, div. A, title VI, §661, title X, §1071(g)(6), Oct. 17, 2006, 120 Stat. 2262, 2402; Pub. L. 110-417, [div. A], title VI, §641, Oct. 14, 2008, 122 Stat. 4493; Pub. L. 113-291, div. A, title VI, §631, Dec. 19, 2014, 128 Stat. 3405; Pub. L. 114-328, div. A, title VI, §661(c), Dec. 23, 2016, 130 Stat. 2170.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (j)(3)(C), is the date of enactment of Pub. L. 114-328, which was approved Dec. 23, 2016.

PRIOR PROVISIONS

A prior section 2484 was renumbered section 2483 of this title.

AMENDMENTS

2016—Subsecs. (i) to (k). Pub. L. 114-328 added subsecs. (i) to (k).

2014—Subsec. (f). Pub. L. 113-291 amended subsec. (f) generally. Prior to amendment, text read as follows: “The Secretary of Defense may not use the exception provided in section 2304(c)(5) of this title regarding the procurement of a brand-name commercial item for resale in, at, or by commissary stores unless the commercial item is regularly sold outside of commissary stores under the same brand name as the name by which the commercial item will be sold in, at, or by commissary stores. In determining whether a brand name commercial item is regularly sold outside of commissary stores, the Secretary shall consider only sales of the item on a regional or national basis by commercial grocery or other retail operations consisting of multiple stores.”

2008—Subsec. (h)(3) to (5). Pub. L. 110-417 added par. (3), redesignated former pars. (3) and (4) as (4) and (5), respectively, and substituted “paragraph (1), (2), or (3)” for “paragraph (1) or (2)” in par. (4).

2006—Pub. L. 109-364, §1071(g)(6), made technical correction to directory language of Pub. L. 108-375, §651(a)(5)(C). See 2004 Amendment notes for subsecs. (a) to (d) below.

Subsec. (c)(3). Pub. L. 109-364, §661(a), designated existing provisions as subpar. (A), substituted “Except as provided in subparagraph (B), subsections” for “Subsections”, and added subpar. (B).

Subsec. (g). Pub. L. 109-364, §661(b), designated existing provisions as par. (1), substituted “Except as provided in paragraph (2), subsections” for “Subsections”, and added par. (2).

2004—Pub. L. 108-375, §651(a)(2), (4), renumbered section 2486 of this title as this section.

Subsecs. (a) to (c). Pub. L. 108-375, §651(a)(5)(C), as amended by Pub. L. 109-364, §1071(g)(6), added subsecs. (a) to (c).

Pub. L. 108-375, §651(a)(5)(A), struck out subsecs. (a) to (c) which related to operation of the Defense Commissary Agency and the defense commissary system, use of funds to cover expenses of operating commissary stores and central product processing facilities, and supplemental funds for commissary operations, respectively.

Subsec. (d). Pub. L. 108-375, §651(a)(5)(C), as amended by Pub. L. 109-364, §1071(g)(6), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 108-375, §651(a)(5)(B), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(1). Pub. L. 108-375, §651(a)(5)(D), struck out “(consistent with this section and section 2685 of this title)” before period at end.

Subsec. (f). Pub. L. 108-375, §651(a)(5)(B), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 108-375, §651(a)(5)(E), substituted “Subsections (d) and (e)” for “Subsections (c) and (d)” before “shall not apply to the pricing”.

Pub. L. 108-375, §651(a)(5)(A), (B), redesignated subsec. (f) as (g) and struck out heading and text of former subsec. (g), which related to the imposition of charges by the Secretary of Defense for the collection of dishonored checks.

Subsec. (h). Pub. L. 108-375, §651(a)(5)(F), added subsec. (h).

2002—Subsec. (b)(12). Pub. L. 107-314 substituted “, except that the Secretary shall notify Congress of any addition of, or change in, a merchandise category under this paragraph.” for “, except that the Secretary shall submit to Congress, not later than March 1 of each year, a report describing—

“(A) any addition of, or change in, a merchandise category proposed to be made under this paragraph during the one-year period beginning on that date; and

“(B) those additions and changes in merchandise categories actually made during the preceding one-year period.”

2000—Subsec. (b)(11), (12). Pub. L. 106-398, §1 [[div. A], title III, §334(a)], added par. (11) and redesignated former par. (11) as (12).

Subsec. (c). Pub. L. 106-398, §1 [[div. A], title III, §332(a)(1)], substituted “subsection (d) or section” for “section 2484(b) or”.

Subsec. (d)(1). Pub. L. 106-398, §1 [[div. A], title III, §332(a)(2)(A)], substituted “section 2685” for “sections 2484 and 2685”.

Subsec. (d)(3). Pub. L. 106-398, §1 [[div. A], title III, §332(a)(2)(B)], added par. (3).

Subsec. (f). Pub. L. 106-398, §1 [[div. A], title III, §334(b)], struck out “(1)” before “Notwithstanding”, substituted “tobacco products” for “items in the merchandise categories specified in paragraph (2)”, and struck out par. (2) which read as follows: “The merchandise categories referred to in paragraph (1) are as follows:

“(A) Magazines and other periodicals.

“(B) Tobacco products.”

1999—Subsec. (c). Pub. L. 106-65 substituted “November 18, 1997,” for “the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998,” in second sentence.

1998—Subsec. (g). Pub. L. 105-261 added subsec. (g).

1997—Subsec. (a). Pub. L. 105-85, §372(e)(1), inserted heading.

Subsec. (b). Pub. L. 105-85, §372(a)(1), inserted heading and substituted “Merchandise sold in, at, or by commissary stores may include items only in the following categories:” for “Merchandise sold in commissary stores may include items in the following categories:” in introductory provisions.

Subsec. (b)(11). Pub. L. 105-85, §372(a)(2), amended par. (11) generally. Prior to amendment, par. (11) read as follows: “Other categories designated in regulations prescribed by the Secretary of a military department and approved by the Secretary of Defense.”

Subsec. (c). Pub. L. 105-85, §372(b), inserted heading, substituted “in, at, or by commissary stores.” for “in commissary stores.”, and inserted at end “Effective on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998, the uniform percentage shall be equal to five percent and may not be changed except by a law enacted after such date.”

Subsec. (d). Pub. L. 105-85, §372(c), inserted heading and amended text generally. Prior to amendment, text read as follows: “The Secretary of Defense shall prescribe regulations establishing uniform pricing policies for merchandise authorized for sale by this section. The policies in the regulations shall—

“(1) require the establishment of a sales price of each item of merchandise at a level which will recoup the actual product cost of the item (consistent with this section and sections 2484 and 2685 of this title); and

“(2) promote the lowest practical price of merchandise sold at commissary stores.”

Subsec. (e). Pub. L. 105-85, §373, inserted at end “In determining whether a brand name commercial item is regularly sold outside of commissary stores, the Secretary shall consider only sales of the item on a regional or national basis by commercial grocery or other retail operations consisting of multiple stores.”

Pub. L. 105-85, §372(e)(2), inserted heading and substituted “in, at, or by commissary stores” for “in commissary stores” in two places.

Subsec. (f). Pub. L. 105-85, §372(d), added subsec. (f).

1996—Subsec. (e). Pub. L. 104-201 added subsec. (e).

1987—Pub. L. 100-180, §313(a)(2), inserted “and pricing” in section catchline.

Subsec. (d). Pub. L. 100-180, §313(a)(1), added subsec. (d).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-364, div. A, title X, §1071(g), Oct. 17, 2006, 120 Stat. 2402, provided that the amendment made by section 1071(g)(6) is effective as of Oct. 28, 2004, and as if included in Pub. L. 108-375 as enacted.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, §1 [[div. A], title III, §332(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-60, provided that: “The amendments made by this section [amending this section] shall take effect on October 1, 2001.”

REGULATIONS

Pub. L. 100-180, div. A, title III, §313(b), Dec. 4, 1987, 101 Stat. 1074, required Secretary of Defense to prescribe regulations required by subsec. (d) of this section not later than 90 days after Dec. 4, 1987.

SAVINGS PROVISION

Pub. L. 104-201, div. A, title III, §342(b), Sept. 23, 1996, 110 Stat. 2489, provided that: "Section 2486(e) [now 2484(e)] of title 10, United States Code, as added by subsection (a), shall not affect the terms, conditions, or duration of any contract or other agreement entered into by the Secretary of Defense before the date of the enactment of this Act [Sept. 23, 1996] for the procurement of commercial items for resale in commissary stores."

OPERATION OF DEFENSE COMMISSARY SYSTEM AS A NONAPPROPRIATED FUND ENTITY

Pub. L. 114-328, div. A, title VI, §661(g), Dec. 23, 2016, 130 Stat. 2172, provided that: "In the event that the defense commissary system is converted to a nonappropriated fund entity or instrumentality as authorized by section 2484(j)(1) of title 10, United States Code, as added by subsection (c) of this section, the Secretary of Defense may—

"(1) provide for the transfer of commissary assets, including inventory and available funds, to the nonappropriated fund entity or instrumentality; and

"(2) ensure that revenues accruing to the defense commissary system are appropriately credited to the nonappropriated fund entity or instrumentality."

COMPETITIVE PRICING OF LEGAL CONSUMER TOBACCO PRODUCTS SOLD IN DEPARTMENT OF DEFENSE RETAIL STORES

Pub. L. 113-291, div. A, title VI, §633, Dec. 19, 2014, 128 Stat. 3405, provided that:

"(a) PROHIBITION ON BANNING SALE OF LEGAL CONSUMER TOBACCO PRODUCTS.—The Secretary of Defense and the Secretaries of the military departments may not take any action to implement any new policy that would ban the sale of any legal consumer tobacco product category sold as of January 1, 2014, within the defense retail systems or on any Department of Defense vessel at sea.

"(b) USE OF PRICES COMPARABLE TO LOCAL PRICES.—The Secretary of Defense shall issue regulations regarding the pricing of tobacco and tobacco-related products sold in an outlet of the defense retail systems inside the United States, including territories and possessions of the United States, to prohibit the sale of a product at a price below the most competitive price for that product in the local community.

"(c) APPLICATION TO OVERSEAS DEFENSE RETAIL SYSTEMS.—The regulations required by subsection (b) shall direct that the price of a tobacco or tobacco-related product sold in an outlet of the defense retail systems outside of the United States shall be within the range of prices established for that product in outlets of the defense retail systems inside the United States.

"(d) DEFENSE RETAIL SYSTEMS DEFINED.—In this section, the term 'defense retail systems' has the meaning given that term in section 2487(b)(2) of title 10, United States Code."

Pub. L. 115-31, div. C, title VIII, §8034, May 5, 2017, 131 Stat. 254, provided that: "The Secretary of Defense shall issue regulations to prohibit the sale of any tobacco or tobacco-related products in military resale outlets in the United States, its territories and possessions at a price below the most competitive price in the local community: *Provided*, That such regulations shall direct that the prices of tobacco or tobacco-related products in overseas military retail outlets shall be within the range of prices established for military retail system stores located in the United States."

Similar provisions were contained in the following appropriation acts:

Pub. L. 114-113, div. C, title VIII, §8033, Dec. 18, 2015, 129 Stat. 2358.

Pub. L. 113-235, div. C, title VIII, §8073, Dec. 16, 2014, 128 Stat. 2271.

TEST PROGRAM OF SALE OF CERTAIN ITEMS IN COMMISSARY STORES

Pub. L. 108-375, div. A, title VI, §651(g), Oct. 28, 2004, 118 Stat. 1972, provided that:

"(1) The Secretary of Defense may conduct a test program involving the sale of telephone cards, film, and one-time use cameras in not less than 10 commissary stores for a period selected by the Secretary, but not less than six months.

"(2) Within 90 days after the completion of the first year of the test program or within 90 days after the completion of the test program, whichever occurs first, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report containing the results of the test program. The report shall include an analysis of the impact of the sale of such items on the exchange dividend and such recommendations as the Secretary considers appropriate regarding legislative changes necessary to expand the sale of such items in commissary stores."

REPORT ON MERCHANDISE CATEGORIES

Pub. L. 105-85, div. A, title III, §372(f), Nov. 18, 1997, 111 Stat. 1707, provided that, not later than 30 days after Nov. 18, 1997, the Secretary of Defense was to submit to Congress a report specifying the merchandise categories authorized for sale sold in, at, or by commissary stores pursuant to regulations prescribed under subsection (b)(11) of this section, as in effect before Nov. 18, 1997.

§ 2485. Commissary stores: operation

(a) PRIVATE OPERATION.—Under such regulations as the Secretary of Defense may approve, private persons may operate selected commissary store functions, except that such functions may not include functions relating to the procurement of products to be sold in a commissary store or functions relating to the overall management of a commissary system or the management of a commissary store. Such functions shall be carried out by personnel of the Department of Defense under regulations approved by the Secretary of Defense.

(b) CONTRACTS WITH OTHER AGENCIES AND INSTRUMENTALITIES.—(1) The Defense Commissary Agency, and any other agency of the Department of Defense that supports the operation of the commissary system, may enter into a contract or other agreement with another element of the Department of Defense or with another Federal department, agency, or instrumentality to provide or obtain services beneficial to the efficient management and operation of the commissary system. However, the Defense Commissary Agency may not pay for any such service provided by the United States Transportation Command any amount that exceeds the price at which the service could be procured through full and open competition, as such term is defined in section 107 of title 41.

(2) A commissary store operated by a nonappropriated fund instrumentality of the Department of Defense shall be operated in accordance with section 2483 of this title. Subject to such section, the Secretary of Defense may authorize a transfer of goods, supplies, and facilities of, and funds appropriated for, the Defense Commissary Agency or any other agency of the Department of Defense that supports the operation