

## 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

of the commissary system to a nonappropriated fund instrumentality for the operation of a commissary store.

(c) GOVERNING BOARD.—(1) Notwithstanding section 192(d) of this title, the Secretary of Defense shall establish a governing board for the commissary system to provide advice to the Secretary regarding the prudent operation of the commissary system and to assist in the overall supervision of the Defense Commissary Agency. The Secretary may authorize the board to have such supervisory authority as the Secretary considers appropriate to permit the board to carry out its responsibilities.

(2) The Secretary of Defense shall determine the membership of the governing board, which shall include, at a minimum, appropriate representatives from each military department. The chairman of the governing board shall be a commissioned officer or member of the senior executive service who has demonstrated experience or knowledge relevant to the management of the defense commissary system. In selecting other members of the governing board, the Secretary shall give priority to persons with experience related to logistics, military personnel, military entitlements or other experiences of value of management of commissaries.

(3) The governing board shall be accountable only to the Secretary of Defense and to the civilian officer of the Department of Defense who is assigned the responsibility for the overall supervision of the Defense Commissary Agency pursuant to section 192(a) of this title. The Director of the Defense Commissary Agency shall be accountable to and report to the board.

(d) ASSIGNMENT OF ACTIVE DUTY MEMBERS.—(1) Except as provided in paragraph (2), members of the armed forces on active duty may not be assigned to the operation of a commissary store.

(2)(A) The Secretary of Defense may assign an officer on the active-duty list to serve as the Director of the Defense Commissary Agency.

(B) Not more than 18 members (in addition to the officer referred to in subparagraph (A)) of the armed forces on active duty may be assigned to the Defense Commissary Agency. Members who may be assigned under this subparagraph to regional headquarters of the agency shall be limited to enlisted members assigned to duty as advisers in the regional headquarters responsible for overseas commissaries and to veterinary specialists.

(e) REIMBURSEMENT FOR USE OF COMMISSARY FACILITIES BY MILITARY DEPARTMENTS.—(1) The Secretary of a military department shall pay the Defense Commissary Agency the amount determined under paragraph (2) for any use of a commissary facility by the military department for a purpose other than commissary sales or operations in support of commissary sales.

(2) The amount payable under paragraph (1) for use of a commissary facility by a military department shall be equal to the share of depreciation of the facility that is attributable to that use, as determined under regulations prescribed by the Secretary of Defense.

(3) The Director of the Defense Commissary Agency shall credit amounts paid under paragraph (1) for use of a facility to an appropriate account to which proceeds of a surcharge ap-

plied under section 2484(d) of this title are credited.

(4) This subsection applies with respect to a commissary facility that is acquired, constructed, converted, expanded, installed, or otherwise improved (in whole or in part) with the proceeds of a surcharge applied under section 2484(d) of this title.

(f) DONATION OF UNUSABLE FOOD.—(1) The Secretary of Defense may donate food described in paragraph (2) to any of the following entities:

(A) A charitable nonprofit food bank that is designated by the Secretary of Defense or the Secretary of Health and Human Services as authorized to receive such donations.

(B) A State or local agency that is designated by the Secretary of Defense or the Secretary of Health and Human Services as authorized to receive such donations.

(C) A chapter or other local unit of a recognized national veterans organization that provides services to persons without adequate shelter and is designated by the Secretary of Veterans Affairs as authorized to receive such donations.

(D) A not-for-profit organization that provides care for homeless veterans and is designated by the Secretary of Veterans Affairs as authorized to receive such donations.

(2) Food that may be donated under this subsection is commissary store food, mess food, meals ready-to-eat (MREs), rations known as humanitarian daily rations (HDRs), and other food available to the Secretary of Defense that—

(A) is certified as edible by appropriate food inspection technicians;

(B) would otherwise be destroyed as unusable; and

(C) in the case of commissary store food, is unmarketable and unsaleable.

(3) In the case of commissary store food, a donation under this subsection shall take place at the site of the commissary store that is donating the food.

(4) This subsection does not authorize any service (including transportation) to be provided in connection with a donation under this subsection.

(g) COLLECTION OF DISHONORED CHECKS.—(1) The Secretary of Defense may impose a charge for the collection of a check accepted at a commissary store that is not honored by the financial institution on which the check is drawn. The imposition and amounts of charges shall be consistent with practices of commercial grocery stores regarding dishonored checks.

(2)(A) The following persons are liable to the United States for the amount of a check referred to in paragraph (1) that is returned unpaid to the United States, together with any charge imposed under that paragraph:

(i) The person who presented the check.

(ii) Any person whose status and relationship to the person who presented the check provide the basis for that person's eligibility to make purchases at a commissary store.

(B) Any amount for which a person is liable under subparagraph (A) may be collected by deducting and withholding such amount from any amounts payable to that person by the United States.

(3) Amounts collected as charges imposed under paragraph (1) shall be credited to the commissary trust revolving fund.

(4) Appropriated funds may be used to pay any costs incurred in the collection of checks and charges referred to in paragraph (1). An appropriation account charged a cost under the preceding sentence shall be reimbursed the amount of that cost out of funds in the commissary trust revolving fund.

(5) In this subsection, the term “commissary trust revolving fund” means the trust revolving fund maintained by the Department of Defense for surcharge collections and proceeds of sales of commissary stores.

(h) RELEASE OF CERTAIN COMMERCIALY VALUABLE INFORMATION TO PUBLIC.—(1) The Secretary of Defense may limit the release to the public of any information described in paragraph (2) if the Secretary determines that it is in the best interest of the Department of Defense to limit the release of such information. If the Secretary determines to limit the release of any such information, the Secretary may provide for limited release of such information in accordance with paragraph (3).

(2) Paragraph (1) applies to the following:

(A) Information contained in the computerized business systems of commissary stores or the Defense Commissary Agency that is collected through or in connection with the use of electronic scanners in commissary stores, including the following information:

(i) Data relating to sales of goods or services.

(ii) Demographic information on customers.

(iii) Any other information pertaining to commissary transactions and operations.

(B) Business programs, systems, and applications (including software) relating to commissary operations that were developed with funding derived from commissary surcharges.

(3)(A) The Secretary of Defense may, using competitive procedures, enter into a contract to sell information described in paragraph (2).

(B) The Secretary of Defense may release, without charge, information on an item sold in commissary stores to the manufacturer or producer of that item or an agent of the manufacturer or producer.

(C) The Secretary of Defense shall establish performance benchmarks and shall submit information on customer satisfaction and performance data to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(D) The Secretary of Defense may, by contract entered into with a business, grant to the business a license to use business programs referred to in paragraph (2)(B), including software used in or comprising any such program. The fee charged for the license shall be based on the costs of similar programs developed and marketed by businesses in the private sector, determined by means of surveys.

(E) Each contract entered into under this paragraph shall specify the amount to be paid for information released or a license granted under the contract, as the case may be.

(4) Information described in paragraph (2) may not be released, under paragraph (3) or otherwise, in a form that identifies any customer or that provides information making it possible to identify any customer.

(5) Amounts received by the Secretary under this section shall be credited to funds derived from commissary surcharges applied under section 2484(e) of this title, shall be merged with those funds, and shall be available for the same purposes as the funds with which merged.

(i) EXPERT COMMERCIAL ADVICE.—The Secretary of Defense may enter into a contract with an entity to obtain expert commercial advice, commercial assistance, or other similar services not otherwise carried out by the Defense Commissary Agency, to implement section 2481(c), subsections (i) and (j) of section 2484, and section 2487(c) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 141, §2482; Pub. L. 100-456, div. A, title III, §321, Sept. 29, 1988, 102 Stat. 1952; Pub. L. 104-106, div. A, title III, §331(a), Feb. 10, 1996, 110 Stat. 260; Pub. L. 104-201, div. A, title III, §341(b), Sept. 23, 1996, 110 Stat. 2489; Pub. L. 105-261, div. A, title III, §361(b), 363(a), Oct. 17, 1998, 112 Stat. 1984, 1985; Pub. L. 108-136, div. A, title VI, §653, Nov. 24, 2003, 117 Stat. 1522; renumbered §2485 and amended Pub. L. 108-375, div. A, title VI, §651(a)(2), (6), (7), Oct. 28, 2004, 118 Stat. 1964, 1968; Pub. L. 109-163, div. A, title VI, §672, Jan. 6, 2006, 119 Stat. 3319; Pub. L. 111-350, §5(b)(35), Jan. 4, 2011, 124 Stat. 3845; Pub. L. 112-81, div. A, title X, §1061(16), Dec. 31, 2011, 125 Stat. 1583; Pub. L. 114-328, div. A, title VI, §661(e), Dec. 23, 2016, 130 Stat. 2172.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2482 .....	[Uncodified].	Aug. 1, 1953, ch. 305, §624 (last proviso), 67 Stat. 353.

This section is codified as permanent law on the basis of an opinion of the Assistant General Counsel (Fiscal Matters), Department of Defense, dated September 28, 1954. The words “and privately owned organizations” are omitted as surplusage since under 1 U.S.C. 1 “person” includes such an organization.

PRIOR PROVISIONS

A prior section 2485, added Pub. L. 99-145, title XIV, §1460(a), Nov. 8, 1985, 99 Stat. 764; amended Pub. L. 101-510, div. A, title III, §324(a), (b)(1), Nov. 5, 1990, 104 Stat. 1530; Pub. L. 104-201, div. A, title III, §365, Sept. 23, 1996, 110 Stat. 2494, related to donation of unusable food from commissary stores and other activities, prior to repeal by Pub. L. 108-375, div. A, title VI, §651(a)(1), Oct. 28, 2004, 118 Stat. 1964.

A prior section 2486 was renumbered section 2484 of this title.

AMENDMENTS

2016—Subsec. (i). Pub. L. 114-328 added subsec. (i).  
 2011—Subsec. (a). Pub. L. 112-81 struck out par. (1) designation before “Under such regulations” and struck out par. (2) which read as follows: “Any change to private operation of a commissary store function that is being performed by more than 10 Department of Defense civilian employees shall not take effect until the end of the 75-day period beginning on the date on which the Secretary of Defense submits to Congress written notice of the change. Until December 31, 2008,

the Defense Commissary Agency is not required to conduct any cost-comparison study under the policies and procedures of Office of Management and Budget Circular A-76 relating to the possible contracting out of commissary store functions.”

Subsec. (b)(1). Pub. L. 111-350 substituted “section 107 of title 41” for “section 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(6))”.

2006—Subsec. (a)(2). Pub. L. 109-163 inserted at end “Until December 31, 2008, the Defense Commissary Agency is not required to conduct any cost-comparison study under the policies and procedures of Office of Management and Budget Circular A-76 relating to the possible contracting out of commissary store functions.”

2004—Pub. L. 108-375, § 651(a)(2), (6), renumbered section 2482 of this title as this section.

Subsec. (b)(2). Pub. L. 108-375, § 651(a)(7)(A), substituted “section 2483” for “section 2484”.

Subsec. (c)(2). Pub. L. 108-375, § 651(a)(7)(B), inserted at end “The chairman of the governing board shall be a commissioned officer or member of the senior executive service who has demonstrated experience or knowledge relevant to the management of the defense commissary system. In selecting other members of the governing board, the Secretary shall give priority to persons with experience related to logistics, military personnel, military entitlements or other experiences of value of management of commissaries.”

Subsecs. (d) to (h). Pub. L. 108-375, § 651(a)(7)(C), added subsecs. (d) to (h).

2003—Subsec. (a). Pub. L. 108-136 designated existing provisions as par. (1), inserted first sentence, added par. (2), and struck out former first and second sentences which read as follows: “Private persons may operate commissary stores under such regulations as the Secretary of Defense may approve. A contract with a private person for the operation of any commissary store may not require or permit the contractor to carry out functions for the procurement of products to be sold in the store or to engage in functions relating to the overall management of a commissary system or the management of any such store.”

1998—Subsec. (b)(1). Pub. L. 105-261, § 363(a), inserted at end “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 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(6)).”

Subsec. (c). Pub. L. 105-261, § 361(b), added subsec. (c). 1996—Pub. L. 104-106 struck out “private” after “stores:” in section catchline, designated existing text as subsec. (a), inserted heading, and added subsec. (b).

Subsec. (b)(1). Pub. L. 104-201 substituted “another element of the Department of Defense or with another Federal department, agency, or instrumentality to provide or obtain services” for “another department, agency, or instrumentality of the Department of Defense or another Federal agency to provide services”.

1988—Pub. L. 100-456 inserted at end “A contract with a private person for the operation of any commissary store may not require or permit the contractor to carry out functions for the procurement of products to be sold in the store or to engage in functions relating to the overall management of a commissary system or the management of any such store. Such functions shall be carried out by personnel of the Department of Defense under regulations approved by the Secretary of Defense.”

#### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-261, div. A, title III, § 363(b), Oct. 17, 1998, 112 Stat. 1986, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to services provided or obtained on or after the date of the enactment of this Act [Oct. 17, 1998].”

#### ACCEPTANCE OF MILITARY STAR CARD AT COMMISSARIES

Pub. L. 114-328, div. A, title VI, § 662, Dec. 23, 2016, 130 Stat. 2172, provided that:

“(a) IN GENERAL.—The Secretary of Defense shall ensure that—

“(1) commissary stores accept as payment the Military Star Card; and

“(2) any financial liability of the United States relating to such acceptance as payment be assumed by the Army and Air Force Exchange Service.

“(b) MILITARY STAR CARD DEFINED.—In this section, the term ‘Military Star Card’ means a credit card administered under the Exchange Credit Program by the Army and Air Force Exchange Service.”

#### DEMONSTRATION PROGRAM FOR OPERATION OF CERTAIN COMMISSARY STORES BY NONAPPROPRIATED FUND INSTRUMENTALITIES

Pub. L. 102-484, div. A, title III, § 363, Oct. 23, 1992, 106 Stat. 2380, required the Secretary of Defense to establish a demonstration program to determine the feasibility of having nonappropriated fund instrumentalities operate commissary stores at military installations and provided for termination of the program and submission of a report on its implementation, not later than the expiration of the one-year period beginning on Oct. 23, 1992.

#### SUBCHAPTER II—RELATIONSHIP, CONTINUATION, AND COMMON POLICIES OF DEFENSE COMMISSARY AND EXCHANGE SYSTEMS

Sec.

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| 2487. | Relationship between defense commissary system and exchange stores system. |
| 2488. | Combined exchange and commissary stores.                                   |
| 2489. | Overseas commissary and exchange stores: access and purchase restrictions. |

#### AMENDMENTS

2004—Pub. L. 108-375, div. A, title VI, § 651(b)(1), Oct. 28, 2004, 118 Stat. 1971, added subchapter heading and items 2487 to 2489.

#### § 2487. Relationship between defense commissary system and exchange stores system

(a) SEPARATE OPERATION OF SYSTEMS.—(1) Except as provided in paragraph (2), the defense commissary system and the exchange stores system shall be operated as separate systems of the Department of Defense.

(2) Paragraph (1) does not apply to the following:

(A) Combined exchange and commissary stores operated under the authority provided by section 2489 of this title.

(B) NEXMART stores of the Navy Exchange Service Command established before October 1, 2003.

(b) CONSOLIDATION OR OTHER ORGANIZATIONAL CHANGES OF DEFENSE RETAIL SYSTEMS.—(1) The operation and administration of the defense retail systems may not be consolidated or otherwise merged unless the consolidation or merger is specifically authorized by an Act of Congress.

(2) In this subsection, the term “defense retail systems” means the defense commissary system and exchange stores system and other revenue-generating facilities operated by nonappropriated fund instrumentalities of the Department of Defense for the morale, welfare, and recreation of members of the armed forces.