

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.

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.

(c) COMMON BUSINESS PRACTICES.—(1) Notwithstanding subsections (a) and (b), the Secretary of Defense may establish common business processes, practices, and systems—

(A) to exploit synergies between the defense commissary system and the exchange system; and

(B) to optimize the operations of the defense retail systems as a whole and the benefits provided by the commissaries and exchanges.

(2) The Secretary may authorize the defense commissary system and the exchange system to enter into contracts or other agreements—

(A) for products and services that are shared by the defense commissary system and the exchange system; and

(B) for the acquisition of supplies, resale goods, and services on behalf of both the defense commissary system and the exchange system.

(3) For the purpose of a contract or agreement authorized under paragraph (2), the Secretary may—

(A) use funds appropriated pursuant to section 2483 of this title to reimburse a nonappropriated fund entity or instrumentality for the portion of the cost of a contract or agreement entered by the nonappropriated fund entity or instrumentality that is attributable to the defense commissary system; and

(B) authorize the defense commissary system to accept reimbursement from a nonappropriated fund entity or instrumentality for the portion of the cost of a contract or agreement entered by the defense commissary system that is attributable to the nonappropriated fund entity or instrumentality.

(d) ACCESS OF EXCHANGE STORES SYSTEM TO FEDERAL FINANCING BANK.—To facilitate the provision of in-store credit to patrons of the exchange stores system while reducing the costs of providing such credit, the Army and Air Force Exchange Service, Navy Exchange Service Command, and Marine Corps exchanges may issue and sell their obligations to the Federal Financing Bank as provided in section 6 of the Federal Financing Bank Act of 1973 (12 U.S.C. 2285).

(Added Pub. L. 108-375, div. A, title VI, §651(b)(1), Oct. 28, 2004, 118 Stat. 1971; amended Pub. L. 112-81, div. A, title VI, §642, Dec. 31, 2011, 125 Stat. 1466; Pub. L. 114-328, div. A, title VI, §661(d), Dec. 23, 2016, 130 Stat. 2171.)

#### PRIOR PROVISIONS

A prior section 2487, added Pub. L. 99-661, div. A, title III, §313(a), Nov. 14, 1986, 100 Stat. 3852; amended Pub. L. 102-484, div. A, title III, §364(a), (b)(2), Oct. 23, 1992, 106 Stat. 2381, 2382; Pub. L. 104-106, div. A, title III, §332, Feb. 10, 1996, 110 Stat. 260; Pub. L. 107-107, div. A, title III, §333(a), Dec. 28, 2001, 115 Stat. 1058, related to release of certain commercially valuable information to the public by the Secretary of Defense with respect to commissary stores, prior to repeal by Pub. L. 108-375, div. A, title VI, §651(a)(1), Oct. 28, 2004, 118 Stat. 1964.

#### AMENDMENTS

2016—Subsecs. (c), (d). Pub. L. 114-328 added subsec. (c) and redesignated former subsec. (c) as (d).

2011—Subsec. (c). Pub. L. 112-81 added subsec. (c).

#### § 2488. Combined exchange and commissary stores

(a) AUTHORITY.—The Secretary of Defense may authorize a nonappropriated fund instrumentality to operate a military exchange and a commissary store as a combined exchange and commissary store on a military installation.

(b) LIMITATIONS.—(1) Not more than ten combined exchange and commissary stores may be operated pursuant to this section.

(2) The Secretary may select a military installation for the operation of a combined exchange and commissary store under this section only if—

(A) the installation is to be closed, or has been or is to be realigned, under a base closure law; or

(B) a military exchange and a commissary store are operated at the installation by separate entities at the time of, or immediately before, such selection and it is not economically feasible to continue that separate operation.

(c) OPERATION AT CARSWELL FIELD.—Combined exchange and commissary stores operated under this section shall include the combined exchange and commissary store that is operated at the Naval Air Station Fort Worth, Joint Reserve Center, Carswell Field, Texas, under the authority provided in section 375 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 108 Stat. 2736).

(d) ADJUSTMENTS AND SURCHARGES.—Adjustments to, and surcharges on, the sales price of a grocery food item sold in a combined exchange and commissary store under this section shall be provided for in accordance with the same laws that govern such adjustments and surcharges for items sold in a commissary store of the Defense Commissary Agency.

(e) USE OF APPROPRIATED FUNDS.—(1) If a nonappropriated fund instrumentality incurs a loss in operating a combined exchange and commissary store at a military installation under this section as a result of the requirement set forth in subsection (d), the Secretary may authorize a transfer of funds available for the Defense Commissary Agency to the nonappropriated fund instrumentality to offset the loss.

(2) The total amount of appropriated funds transferred during a fiscal year to support the operation of a combined exchange and commissary store at a military installation under this section may not exceed an amount that is equal to 25 percent of the amount of appropriated funds that was provided for the operation of the commissary store of the Defense Commissary Agency on that installation during the last full fiscal year of operation of that commissary store.

(f) NONAPPROPRIATED FUND INSTRUMENTALITY DEFINED.—In this section, the term “nonappropriated fund instrumentality” means the Army and Air Force Exchange Service, Navy Exchange Service Command, Marine Corps exchanges, or any other instrumentality of the United States under the jurisdiction of the armed forces which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the armed forces.