

able without fiscal year limitation for the purposes for which the fund is established and shall be administered as nonappropriated funds.”

§ 2494. Nonappropriated fund instrumentalities: furnishing utility services for morale, welfare, and recreation purposes

Appropriations for the Department of Defense may be used to provide utility services for—

- (1) buildings on military installations authorized by regulation to be used for morale, welfare, and recreation purposes; and
- (2) other morale, welfare, and recreation activities for members of the armed forces.

(Added Pub. L. 108-375, div. A, title VI, § 651(c)(4), Oct. 28, 2004, 118 Stat. 1972.)

PRIOR PROVISIONS

A prior section 2494 was renumbered section 2491 of this title.

§ 2495. Nonappropriated fund instrumentalities: purchase of alcoholic beverages

(a) The Secretary of Defense shall provide that—

- (1) covered alcoholic beverage purchases made for resale on a military installation located in the United States shall be made from the most competitive source and distributed in the most economical manner, price and other factors considered, except that

(2) in the case of malt beverages and wine, such purchases shall be made from, and delivery shall be accepted from, a source within the State in which the military installation concerned is located.

(b) If a military installation located in the contiguous States is located in more than one State, a source of supply in any State in which the installation is located shall be considered for the purposes of subsection (a)(2) to be a source within the State in which the installation is located.

(c)(1) In the case of covered alcoholic beverage purchases of distilled spirits, to determine whether a nonappropriated fund instrumentality of the Department of Defense provides the most economical method of distribution to package stores, the Secretary of Defense shall consider all components of the distribution costs incurred by the nonappropriated fund instrumentality, such as overhead costs (including costs associated with management, logistics, administration, depreciation, and utilities), the costs of carrying inventory, and handling and distribution costs.

(2) The Secretary shall use the agencies performing audit functions on behalf of the armed forces and the Inspector General of the Department of Defense to make determinations under this subsection.

(d) In this section:

(1) The term “covered alcoholic beverage purchases” means purchases of alcoholic beverages by a nonappropriated fund instrumentality of the Department of Defense with nonappropriated funds.

(2) The term “State” includes the District of Columbia.

(Added Pub. L. 99-661, div. A, title III, § 313(a), Nov. 14, 1986, 100 Stat. 3853, § 2488; amended Pub.

L. 100-180, div. A, title III, § 312(a), Dec. 4, 1987, 101 Stat. 1073; Pub. L. 104-106, div. A, title III, § 333, Feb. 10, 1996, 110 Stat. 261; Pub. L. 106-398, § 1 [[div. A], title III, § 335], Oct. 30, 2000, 114 Stat. 1654, 1654A-61; renumbered § 2495, Pub. L. 108-375, div. A, title VI, § 651(b)(2), (c)(5), Oct. 28, 2004, 118 Stat. 1971, 1972.)

AMENDMENTS

2004—Pub. L. 108-375 renumbered section 2488 of this title as this section.

2000—Subsec. (c)(2), (3). Pub. L. 106-398 redesignated par. (3) as (2) and struck out former par. (2) which read as follows: “If the use of a private distributor would subject covered alcoholic beverage purchases of distilled spirits to direct or indirect State taxation, a nonappropriated fund instrumentality shall be considered to be the most economical method of distribution regardless of the results of the determination under paragraph (1).”

1996—Subsec. (a)(1). Pub. L. 104-106, § 333(a), inserted “and distributed in the most economical manner” after “most competitive source”.

Subsecs. (c), (d). Pub. L. 104-106, § 333(b), added subsec. (c) and redesignated former subsec. (c) as (d).

1987—Subsec. (a)(2). Pub. L. 100-180 struck out “purchased for resale on a military installation located in the contiguous States” after “malt beverages and wines”.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-180, div. A, title III, § 312(b), Dec. 4, 1987, 101 Stat. 1073, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to purchases of malt beverages and wine after the end of the 60-day period beginning on the date of the enactment of this Act [Dec. 4, 1987].”

PROCUREMENT OF MALT BEVERAGES AND WINE BY NONAPPROPRIATED FUND ACTIVITY

Pub. L. 109-148, div. A, title VIII, § 8080, Dec. 30, 2005, 119 Stat. 2717, which provided that none of the funds appropriated by div. A of Pub. L. 109-148 were to be used for the support of any nonappropriated funds activity of the Department of Defense that procured malt beverages and wine with nonappropriated funds for resale (including such alcoholic beverages sold by the drink) on a military installation located in the United States unless such malt beverages and wine were procured within that State, or in the case of the District of Columbia, within the District of Columbia, in which the military installation was located, was from the Department of Defense Appropriations Act, 2006, and was repeated in provisions of subsequent appropriations acts which are not set out in the Code. Similar provisions were contained in the following prior appropriations acts:

Pub. L. 108-287, title VIII, § 8087, Aug. 5, 2004, 118 Stat. 991.

Pub. L. 108-87, title VIII, § 8088, Sept. 30, 2003, 117 Stat. 1093.

Pub. L. 107-248, title VIII, § 8092, Oct. 23, 2002, 116 Stat. 1558.

Pub. L. 107-117, div. A, title VIII, § 8108, Jan. 10, 2002, 115 Stat. 2271.

Pub. L. 106-259, title VIII, § 8108, Aug. 9, 2000, 114 Stat. 698.

Pub. L. 106-79, title VIII, § 8132, Oct. 25, 1999, 113 Stat. 1266.

Pub. L. 104-61, title VIII, § 8055, Dec. 1, 1995, 109 Stat. 662.

Pub. L. 103-335, title VIII, § 8058A, Sept. 30, 1994, 108 Stat. 2632.

Pub. L. 103-139, title VIII, § 8099A, Nov. 11, 1993, 107 Stat. 1462.

Pub. L. 102-396, title IX, § 9114, Oct. 6, 1992, 106 Stat. 1929.

Pub. L. 102-172, title VIII, § 8111A, Nov. 26, 1991, 105 Stat. 1200.

Pub. L. 101-511, title VIII, §8068, Nov. 5, 1990, 104 Stat. 1889.

Pub. L. 101-165, title IX, §9093, Nov. 21, 1989, 103 Stat. 1149.

Pub. L. 100-463, title VIII, §8122, Oct. 1, 1988, 102 Stat. 2270-40.

Pub. L. 100-202, §101(b) [title VIII, §8081], Dec. 22, 1987, 101 Stat. 1329-43, 1329-76.

Pub. L. 99-500, §101(c) [title IX, §9090], Oct. 18, 1986, 100 Stat. 1783-82, 1783-116, and Pub. L. 99-591, §101(c) [title IX, §9090], Oct. 30, 1986, 100 Stat. 3341-82, 3341-116.

Pub. L. 99-190, §101(b) [title VIII, §8099], Dec. 19, 1985, 99 Stat. 1185, 1219.

§ 2495a. Overseas package stores: treatment of United States wines

The Secretary of Defense shall ensure that each nonappropriated-fund activity engaged principally in selling alcoholic beverage products in a packaged form (commonly referred to as a “package store”) that is located at a military installation outside the United States shall give appropriate treatment with respect to wines produced in the United States to ensure that such wines are given, in general, an equitable distribution, selection, and price when compared with wines produced by the host nation.

(Added Pub. L. 100-180, div. A, title III, §311(a)(1), Dec. 4, 1987, 101 Stat. 1073, §2489; renumbered §2495a, Pub. L. 108-375, div. A, title VI, §651(b)(2), (c)(5), Oct. 28, 2004, 118 Stat. 1971, 1972.)

AMENDMENTS

2004—Pub. L. 108-375 renumbered section 2489 of this title as this section.

REGULATIONS DEADLINE

Pub. L. 100-180, div. A, title III, §311(b), Dec. 4, 1987, 101 Stat. 1073, directed Secretary of Defense to prescribe regulations to implement this section not later than 90 days after Dec. 4, 1987.

§ 2495b. Sale or rental of sexually explicit material prohibited

(a) PROHIBITION OF SALE OR RENTAL.—The Secretary of Defense may not permit the sale or rental of sexually explicit material on property under the jurisdiction of the Department of Defense.

(b) PROHIBITION OF OFFICIALLY PROVIDED SEXUALLY EXPLICIT MATERIAL.—A member of the armed forces or a civilian officer or employee of the Department of Defense acting in an official capacity may not provide for sale, remuneration, or rental sexually explicit material to another person.

(c) RESALE ACTIVITIES REVIEW BOARD.—(1) The Secretary of Defense shall establish a nine-member board to make recommendations to the Secretary regarding whether material sold or rented, or proposed for sale or rental, on property under the jurisdiction of the Department of Defense is barred from sale or rental by subsection (a).

(2)(A) The Secretary of Defense shall appoint six members of the board to broadly represent the interests of the patron base served by the defense commissary system and the exchange system. The Secretary shall appoint one of the members to serve as the chairman of the board. At least one member appointed under this sub-

paragraph shall be a person with experience managing or advocating for military family programs and who is also an eligible patron of the defense commissary system and the exchange system.

(B) The Secretary of each of the military departments shall appoint one member of the board.

(C) A vacancy on the board shall be filled in the same manner as the original appointment.

(3) The Secretary of Defense may detail persons to serve as staff for the board. At a minimum, the Secretary shall ensure that the board is assisted at meetings by military resale and legal advisors.

(4) The recommendations made by the board under paragraph (1) shall be made available to the public. The Secretary of Defense shall publicize the availability of such recommendations by such means as the Secretary considers appropriate.

(5) Members of the board shall be allowed travel expense, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 while away from their homes or regular places of business in the performance of services for the board.

(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations to implement this section.

(e) DEFINITIONS.—In this section:

(1) The term “sexually explicit material” means an audio recording, a film or video recording, or a periodical with visual depictions, produced in any medium, the dominant theme of which depicts or describes nudity, including sexual or excretory activities or organs, in a lascivious way.

(2) The term “property under the jurisdiction of the Department of Defense” includes commissaries, all facilities operated by the Army and Air Force Exchange Service, the Navy Exchange Service Command, the Navy Resale and Services Support Office, Marine Corps exchanges, and ships’ stores.

(Added Pub. L. 104-201, div. A, title III, §343(a)(1), Sept. 23, 1996, 110 Stat. 2489, §2489a; renumbered §2495b, Pub. L. 108-375, div. A, title VI, §651(b)(2), (c)(5), Oct. 28, 2004, 118 Stat. 1971, 1972; amended Pub. L. 110-417, [div. A], title VI, §642(a), Oct. 14, 2008, 122 Stat. 4493.)

AMENDMENTS

2008—Subsecs. (c) to (e). Pub. L. 110-417 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

2004—Pub. L. 108-375 renumbered section 2489a of this title as this section.

EFFECTIVE DATE

Pub. L. 104-201, div. A, title III, §343(b), Sept. 23, 1996, 110 Stat. 2490, provided that: “Subsection (a) of section 2489a [now 2495b] of title 10, United States Code, as added by subsection (a) of this section, shall take effect 90 days after the date of the enactment of this Act [Sept. 23, 1996].”

RESALE ACTIVITIES REVIEW BOARD: ESTABLISHMENT AND INITIAL MEETING

Pub. L. 110-417, [div. A], title VI, §642(b), Oct. 14, 2008, 122 Stat. 4494, provided that: