

(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 “non-appropriated 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.

(Added Pub. L. 104-106, div. A, title III, §336(a)(1), Feb. 10, 1996, 110 Stat. 263, §2490a; amended Pub. L. 105-85, div. A, title X, §1061(d), Nov. 18, 1997, 111 Stat. 1891; Pub. L. 108-136, div. A, title X, §1043(c)(2), Nov. 24, 2003, 117 Stat. 1611; renumbered §2488, Pub. L. 108-375, div. A, title VI, §651(b)(3), Oct. 28, 2004, 118 Stat. 1971; Pub. L. 111-383, div. A, title X, §1075(b)(37), Jan. 7, 2011, 124 Stat. 4371.)

Editorial Notes

REFERENCES IN TEXT

Section 375 of the National Defense Authorization Act for Fiscal Year 1995, referred to in subsec. (c), is section 375 of Pub. L. 103-337, div. A, title III, Oct. 5, 1994, 108 Stat. 2736, as amended, which is not classified to the Code.

PRIOR PROVISIONS

A prior section 2488 was renumbered section 2495 of this title.

AMENDMENTS

2011—Subsec. (f). Pub. L. 111-383 substituted “armed forces” for “Armed Forces” in two places.

2004—Pub. L. 108-375 renumbered section 2490a of this title as this section.

2003—Subsec. (f). Pub. L. 108-136, §1043(c)(2), substituted “NONAPPROPRIATED FUND INSTRUMENTALITY DEFINED.—In this section, the term” for “DEFINITIONS.—In this section:

“(1) The term” and struck out par. (2) which read as follows: “The term ‘base closure law’ has the meaning given such term by section 2667(h) of this title.”

1997—Subsec. (f)(2). Pub. L. 105-85 substituted “section 2667(h)” for “section 2667(g)”.

§ 2489. Overseas commissary and exchange stores: access and purchase restrictions

(a) **AUTHORITY TO ESTABLISH RESTRICTIONS.**—The Secretary of Defense may establish restrictions on the ability of eligible patrons of commissary and exchange stores located outside of the United States to purchase certain merchandise items (or the quantity of certain merchandise items) otherwise included within an authorized merchandise category if the Secretary determines that such restrictions are necessary to prevent the resale of such merchandise in viola-

tion of treaty obligations of the United States or host nation laws (to the extent such laws are not inconsistent with United States laws).

(b) **LIMITATIONS ON USE OF AUTHORITY.**—In establishing a quantity or other restriction, the Secretary—

(1) may not discriminate among the various categories of eligible patrons of the commissary and exchange system; and

(2) shall ensure that the restriction is consistent with the purpose of the overseas commissary and exchange system to provide reasonable access for eligible patrons to purchase merchandise items made in the United States.

(Added Pub. L. 105-261, div. A, title III, §365(a), Oct. 17, 1998, 112 Stat. 1986, §2492; amended Pub. L. 106-65, div. A, title X, §1066(a)(22), Oct. 5, 1999, 113 Stat. 771; Pub. L. 107-314, div. A, title X, §1041(a)(15), Dec. 2, 2002, 116 Stat. 2645; renumbered §2489, Pub. L. 108-375, div. A, title VI, §651(b)(3), Oct. 28, 2004, 118 Stat. 1971; Pub. L. 112-239, div. A, title VI, §651, Jan. 2, 2013, 126 Stat. 1783.)

Editorial Notes

PRIOR PROVISIONS

A prior section 2489 was renumbered section 2495a of this title.

A prior section 2489a was renumbered section 2495b of this title.

A prior section 2490 was renumbered section 2868 of this title.

A prior section 2490a was renumbered section 2488 of this title.

Another prior section 2490a was renumbered section 2783 of this title.

AMENDMENTS

2013—Subsec. (a). Pub. L. 112-239, §651(b)(1), redesignated par. (1) as subsec. (a) and added heading.

Subsec. (b). Pub. L. 112-239, §651(b)(2), (3), redesignated par. (2) of former subsec. (a) as (b), added heading, and redesignated subpars. (A) and (B) of former par. (2) as pars. (1) and (2), respectively.

Pub. L. 112-239, §651(a), struck out subsec. (b). Text read as follows: “For each location outside the United States that is served by the commissary system or the exchange system, the Secretary of Defense may maintain a list of controlled merchandise items, except that, after October 17, 1998, the Secretary may not change the list to add a merchandise item unless, before making the change, the Secretary submits to Congress a notice of the proposed addition and the reasons for the addition of the item.”

Subsec. (c). Pub. L. 112-239, §651(a), struck out subsec. (c). Text read as follows: “The Secretary of Defense shall notify Congress of any change proposed or made to any of the host nation laws or any of the treaty obligations of the United States, and any changed conditions within host nations, if the change would necessitate the use of quantity or other restrictions on purchases in commissary and exchange stores located outside the United States.”

2004—Pub. L. 108-375 renumbered section 2492 of this title as this section.

2002—Subsec. (c). Pub. L. 107-314 added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: “The Secretary of Defense shall notify Congress of any change proposed or made to any of the host nation laws or any of the treaty obligations of the United States, and any changed conditions within host nations, if the change would necessitate the use of quantity or other restrictions on purchases in commissary and exchange stores located outside the United States.”

1999—Subsec. (b). Pub. L. 106-65 substituted “October 17, 1998” for “the date of the enactment of this section”.

SUBCHAPTER III—MORALE, WELFARE, AND RECREATION PROGRAMS AND NON-APPROPRIATED FUND INSTRUMENTALITIES

- Sec.
2491. Uniform funding and management of morale, welfare, and recreation programs.
- 2491a. Department of Defense golf courses: limitation on use of appropriated funds.
- 2491b. Use of appropriated funds for operation of Armed Forces Recreation Center, Europe: limitation.
- 2491c. Retention of morale, welfare, and recreation funds by military installations: limitation.
2492. Nonappropriated fund instrumentalities: contracts with other agencies and instrumentalities to provide and obtain goods and services.
- 2492a. Limitation on Department of Defense entities competing with private sector in offering personal information services.
2493. Fisher Houses: administration as non-appropriated fund instrumentality.
2494. Nonappropriated fund instrumentalities: furnishing utility services for morale, welfare, and recreation purposes.
2495. Nonappropriated fund instrumentalities: purchase of alcoholic beverages.
- 2495a. Overseas package stores: treatment of United States wines.
- 2495b. Sale or rental of sexually explicit material prohibited.

Editorial Notes

AMENDMENTS

2009—Pub. L. 111-84, div. A, title VI, §651(b), Oct. 28, 2009, 123 Stat. 2369, added item 2492a.

2004—Pub. L. 108-375, div. A, title VI, §651(c)(1), Oct. 28, 2004, 118 Stat. 1971, added subchapter heading and items 2491 to 2495b.

Statutory Notes and Related Subsidiaries

TELEPHONE SERVICES FOR MILITARY PERSONNEL SERVING IN COMBAT ZONES

Pub. L. 110-181, div. A, title VIII, §885, Jan. 28, 2008, 122 Stat. 265, as amended by Pub. L. 111-383, div. A, title VI, §641, Jan. 7, 2011, 124 Stat. 4241; Pub. L. 112-81, div. A, title X, §1062(c), Dec. 31, 2011, 125 Stat. 1585, provided that:

“(a) COMPETITIVE PROCEDURES REQUIRED.—

“(1) REQUIREMENT.—When the Secretary of Defense considers it necessary to provide morale, welfare, and recreation telephone services for military personnel serving in combat zones, the Secretary shall use competitive procedures when entering into a contract to provide those services.

“(2) REVIEW AND DETERMINATION.—Before soliciting bids or proposals for new contracts, or considering extensions to existing contracts, to provide morale, welfare, and recreation telephone services for military personnel serving in combat zones, the Secretary shall review and determine whether it is in the best interest of the Department to require bids or proposals, or adjustments for the purpose of extending a contract, to include options that minimize the cost of the telephone services to individual users while providing individual users the flexibility of using phone cards from other than the prospective contractor.

“(b) EFFECTIVE DATE.—

“(1) REQUIREMENT.—Subsection (a)(1) shall apply to any new contract to provide morale, welfare, and

recreation telephone services for military personnel serving in combat zones that is entered into after the date of the enactment of this Act [Jan. 28, 2008].

“(2) REVIEW AND DETERMINATION.—Subsection (a)(2) shall apply to any new contract or extension to an existing contract to provide morale, welfare, and recreation telephone services for military personnel serving in combat zones that is entered into or agreed upon after the date of the enactment of this Act.

“(c) MORALE, WELFARE, AND RECREATION TELEPHONE SERVICES DEFINED.—In this section, the term ‘morale, welfare, and recreation telephone services’ means unofficial telephone calling center services supporting calling centers provided by the Army and Air Force Exchange Service, Navy Exchange Service Command, Marine Corps exchanges, or any other nonappropriated fund 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.’”

§ 2491. Uniform funding and management of morale, welfare, and recreation programs

(a) **AUTHORITY FOR UNIFORM FUNDING AND MANAGEMENT.**—Under regulations prescribed by the Secretary of Defense, funds appropriated to the Department of Defense and available for morale, welfare, and recreation programs may be treated as nonappropriated funds and expended in accordance with laws applicable to the expenditures of nonappropriated funds. When made available for morale, welfare, and recreation programs under such regulations, appropriated funds shall be considered to be nonappropriated funds for all purposes and shall remain available until expended.

(b) **CONDITIONS ON AVAILABILITY.**—Funds appropriated to the Department of Defense may be made available to support a morale, welfare, or recreation program only if the program is authorized to receive appropriated fund support and only in the amounts the program is authorized to receive.

(c) **CONVERSION OF EMPLOYMENT POSITIONS.**—(1) The Secretary of Defense may identify positions of employees in morale, welfare, and recreation programs within the Department of Defense who are paid with appropriated funds whose status may be converted from the status of an employee paid with appropriated funds to the status of an employee of a nonappropriated fund instrumentality.

(2) The status of an employee in a position identified by the Secretary under paragraph (1) may, with the consent of the employee, be converted to the status of an employee of a nonappropriated fund instrumentality. An employee who does not consent to the conversion may not be removed from the position because of the failure to provide such consent.

(3) The conversion of an employee from the status of an employee paid by appropriated funds to the status of an employee of a nonappropriated fund instrumentality shall be without a break in service for the concerned employee. The conversion shall not entitle an employee to severance pay, back pay or separation pay under subchapter IX of chapter 55 of title 5, or be considered an involuntary separation or other adverse personnel action entitling an employee to any right or benefit under such title or any other provision of law or regulation.