

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 non-appropriated 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 non-appropriated 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 non-appropriated 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 Financ-

ing 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.)

#### Editorial Notes

##### 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 non-appropriated 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 non-appropriated 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 “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. 4871.)

#### 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 violation 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