§ 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 applied 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)
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.

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.

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

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.

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.

Release of Certain Commercially Valuable Information to Public.—

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).

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.

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

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.

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.

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.


Historical and Revision Notes

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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 2486 was renumbered section 2484 of this title.

Amendments

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.”


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. (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. (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**


**Demonstration Program for Operation of Certain Commissary Stores by Nonappropriated Fund Instrumentalities**