DEFENSE COMMISSARY AGENCY
HEADQUARTERS
1300 E AVENUE
FORT LEE, VIRGINIA 23801-1800

REPLY TO
ATTENTION OF

PS   May 3, 2010

NOTICE TO THE TRADE – DeCA NOTICE 10-87

Subject: **IMPORTANT NOTICE** – Brand Name and Grandfathered Products

An analysis of our category review process revealed that the Excel file entitled "Grandfathered Products.xls" found attached with this Notice to the Trade at www.commissaries.com/business/ntt_2010.cfm identifies products that may not properly qualify for sale in, at, or by commissary stores under the statutory "special rule for brand-name commercial items" found at Title 10, United States Code, Section 2484(f). The law provides that DeCA may not use other than competitive procedures to obtain any brand name items unless the specific product offered for sale in the commissary is regularly sold "under the same brand name" in commercial stores. Commercial stores are defined in the statute as being a regional or national commercial grocery or other retail operation consisting of multiple stores. In determining commercial chains, convenience stores are excluded from the definition. When 10 U.S.C. § 2484(f) was initially enacted, those products which would not qualify for continuation in the system once their contract expired were commonly referred to as being "grandfathered."

Any product, accepted under the brand name exception to the Competition in Contracting Act, *that* does not meet the statutory requirements of 10 U.S.C. § 2484(f), will be deleted on December 31, 2010. To demonstrate that any of the products listed are, in fact, qualified for sale in, at, or by commissary stores, manufacturers or their authorized representatives must submit proof of each product's qualification for resale under the statutory exception. While this listing may not be all inclusive, we believe there are a minimum of three ways to demonstrate compliance with the statutory requirements:

- That the product is actually regularly sold outside of commissary stores under the same brand name as the name by which the commercial item is sold in, at, or by commissary stores. Documentation may be in the form of invoices, delivery receipts, or other client documents that demonstrate the products are carried in qualifying regional or national commercial chains.

- That before December 31, 2010, a product not currently sold in a qualifying regional or commercial chain, has been accepted for sale by a qualifying regional or commercial chain. Documentation may be in the form of invoices, delivery receipts, or other client documents; or product movement reports from recognized national or regional sources; that demonstrate the products are carried in qualifying regional or national commercial chains.

- That a product similar to that sold in, at, or by commissaries, except for the packaging, is currently sold in a qualifying regional or national commercial chain,

and the repackaged item is submitted for consideration as a substitute for the current nonconforming product. To demonstrate qualification, invoices, delivery receipts, or other client documents; or product movement reports from recognized national or regional sources; that demonstrate the products are carried in qualifying regional or national commercial chains, may be submitted. In addition, provide documentation that the conforming repackaged product is of the same quality as the nonconforming product currently sold in, at, or by commissaries, must be submitted.

- Other proposals to demonstrate compliance with the statutory requirements may be submitted for consideration.

Questions regarding the statutory provisions underlying this NTT may be submitted to Elliot Clark, Deputy General Counsel, Commercial Law, 804-734-8000, extension 4-8116, or decagc@deca.mil. Documentation of sale in other qualifying markets may be submitted, in writing to the applicable category manager, or presented in person. Product or repackaging presentations appointments may be made by contacting the applicable category manager.

William E. Sherman
General Counsel

Christopher T. Burns
Director of Sales