

Frequently Asked Questions concerning NTT 10-87

Updated July 6, 2010

1. Why has DeCA decided to initiate this process?

A. Solely to come into compliance with 10 USC §2484(f) which requires that in order for DeCA to accept for sale a brand name commercial item using the exception to the Competition in Contracting Act the item must be also sold in the commercial market place.

2. Has DeCA created a second list of products that may not properly qualify for sale in commissary stores under the brand name commercial items exception to the Competition in Contracting Act?

A. DeCA has not created a second list of product nor added any products to the published list referenced with the issuance of NTT 10-87.

3. Do overseas items require a retail exposure in their respective countries only or do they require a retail exposure in the United States?

A. If they are offered only in overseas commissaries, then they must have a retail presence in the overseas area, but do not have to have a presence in a U.S. regional or national chain. Whether these overseas brand name items are carried in U.S. commissaries is determined on a case-by-case basis using the category management process.

4. We intend to present a new food line that will simultaneously roll out nationally in late 2010- early 2011. Presentations to major food retailers begin in June, DeCA being one of them. Our question is. How do we complete the Certification of Brand Name Products Form since this line of food is totally new to the market? We want to offer the Commissary patron the opportunity to purchase this line at the same time all other major retailers will have it on their shelves.

A. You should, in making a presentation for a simultaneous rollout of product, clearly indicate on the presentation documentation, including the certification form, that the product will be a simultaneous roll out, and that qualifying commercial retailers will also participate in the rollout. The product will then be subject to the normal category management process. If the product meets our needs it can be accept by the buyer under the simultaneous introduction provision.

5. What is a qualified brand name commercial item for the purpose of meeting the requirements of the statute?

A. It is the “name” of the product that is the focus of this determination. A product is not required to have the same UPC nor is it required to be the same size. It is an item that is sold under the same brand name in both the commissary and the commercial market place. For example, if Kraft sells 12 oz Kraft Shredded Cheddar Cheese to the commissary and sells a 24 oz Kraft Shredded Cheddar Cheese to the commercial market place the fact that both are referred to as Kraft Shredded Cheddar Cheese qualifies the product as a brand name commercial item under the statute.

6. Would the fact that a product has a history of being the sales leader with sales of over \$100M annually and a 50 year history in DeCA exclude the item from the list?

A. DeCA cannot remove items from the "grandfathered list" solely based upon the products past performance. Likewise, a past presence in the commercial marketplace is not sufficient to comply with the law. By law, DeCA may only utilize the special rule for brand-name commercial items for items that are sold in a national or regional commercial chain. Accordingly, unless these items have or once again attain a presence in a qualifying commercial marketplace by December 31, 2010, they must be deleted from the authorized commissary stockage list.

7. Are those items listed on the “grandfathered” item list sent out on May 3, 2010, the only items that the NTT pertains to?

A. DeCA believes it identified all of the items, whose compliance under the statute is in question on the list it published on May 3. However, if we inadvertently missed an item, we would expect that fact would be brought to our attention. Each manufacturer has the detailed knowledge of which of their products meets the definition of a brand name commercial product and whether it is sold in the commercial market place and which products do not. If you have knowledge of a product that your firm carries that is not on the list, it still must comply with the requirements of the brand name exception to remain in the commissary after December 31, 2010.

8. Does an item on the list that is part of the DeCA Club Pack program and is currently carried in a club store qualify as a commercial product under the brand name exception?

A. Items carried by club stores, mass merchandisers, and similar entities qualify as commercial entities under the brand name exception

9. Does the sale of items in small chains of 4 to 15 health food/vitamin/drug stores qualify meet the requirement of “being available for sale in commercial stores under the same brand name as required by 10 USC 2484(f)?

A. If the identical products you propose to offer DeCA are carried under the same brand name, in small chains of 4 to 15 food/vitamin stores, that would meet the brand name exception requirement of the statute.

10. Can a company qualify under the brand name exception by having the identical product but using two different names?

A. No, the law does not provide for a “mix and match” scenario, so the fact that an identical product is sold by a company under a different name, is not sufficient to allow its retention in the commissary system.

11. Will DeCA, as it has in the past, honor the sell through period for discontinued items?

A. Yes, if a product no longer qualifies under the brand name exception by December 31, 2010 and can no longer be sold in the commissary, DeCA will honor its sell through policy for discontinued items.