SEC. ___. STATUTORY STREAMLINING TO ENABLE DEFENSE COMMISSARY AGENCY TO BECOME PARTIALLY SELF-SUSTAINING.

(a) COMPETITION REQUIREMENTS FOR CONTRACTS.—Section 2304(c)(5) of title 10, United States Code, is amended by striking "brand-name".

(b) PURPOSE OF THE COMMISSARY SYSTEM.—Section 2481 of such title is amended—

(1) in subsection (a), by striking ", at reduced prices,";

(2) in subsection (b)—

(A) by inserting "each" before "intended"; and

(B) by inserting "and provide access to products for" after "life of"; and

(3) by striking subsection (d).

(c) CRITERIA FOR ESTABLISHMENT OR CLOSURE OF COMMISSARY STORES.—

(1) CRITERIA FOR ESTABLISHMENT.—Subsection (a) of section 2482 of such title is amended—

(A) by inserting "(1)" after "ESTABLISHMENT.—";

(B) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(C) in subparagraph (A), as so redesignated, by inserting "outside the United States" after "commissary store"; and

(D) by adding at the end the following new paragraph:

"(2) The feasibility of cost recovery shall be the primary consideration whenever the Secretary of Defense—

"(A) assesses the need to establish a commissary store in the United States; and

"(B) selects the actual location for the store.".

(2) CRITERIA FOR CLOSURE.—Paragraph (1) of subsection (c) of such section is amended by striking "Whenever assessing" and all that follows and inserting "Whenever the Secretary of Defense is assessing whether to close a commissary store, the following shall be primary considerations in such assessment:

"(A) The extent by which the operation of the commissary store is able to recover costs.

"(B) The effect of the closure on the quality of life of members of the armed forces on active duty and their dependents who use the store and on the welfare and security of the military community in which the commissary is located.".

(d) FINANCING OF COMMISSARY SYSTEM OPERATING EXPENSES AND INVENTORIES.—

(1) IN GENERAL.—Section 2483 of such title is amended to read as follows:

"§2483. Commissary stores: use of defense working capital funds to cover operating expenses and to finance resale inventories

"(a) OPERATION OF AGENCY AND SYSTEM.—Except as otherwise provided in this title, working capital funds established under section 2208 of this title shall be used to fund the operations and merchandise resale inventories of the defense commissary system. Those working capital funds shall be credited with such amounts as are appropriated for such purposes and with receipts described in subsections (c) and (d).

"(b) OPERATING EXPENSES.—Working capital funds established under section 2208 of this title shall be used to finance operating expenses of the defense commissary system and the acquisition of merchandise resale inventories. Operating expenses of the defense commissary system include the following:

"(1) Salaries and wages of employees of the United States, host nations, and contractors supporting commissary store operations.

"(2) Utilities.

"(3) Communications.

"(4) Operating supplies and services

"(5) Second destination transportation costs as authorized by section 2643 of this title.

"(6) Any cost associated with above-store-level management or other indirect support of a commissary store or a central product processing facility, including equipment maintenance and information technology costs.

"(c) FUNDING OF COMMISSARY OPERATIONS.—(1) The defense commissary system shall be managed with the objectives of attaining—

"(A) uniform system-wide pricing; and

"(B) a proportional allocation of funding sources for operating expenses.

"(2) The Secretary of Defense shall seek to achieve the objective of attaining a proportional allocation of funding sources for operating expenses for the defense commissary system as follows:

"(A) The Secretary shall prepare an estimation of the portion of the total operating expenses for the defense commissary system that are allocable to operations overseas and at commissaries within the United States that are designated by the Secretary for appropriated fund support.

"(B) The portion of operating expenses estimated under subparagraph (A) shall be programmed to be financed through annual appropriations for defense working capital funds.

"(C) The estimation of the remaining portion of operating expenses for the defense commissary system shall be financed as described in paragraph (3) and shall be used to establish prices for commissary merchandise and services consistent with the objective of attaining uniform system-wide pricing.

"(3) The portion of operating expenses for the defense commissary system that are not financed from appropriations for defense working capital funds shall be financed from receipts from the following (and from the exercise of authority provided by section 2208 of this title):

"(A) The sale of products.

"(B) The sale of services.

"(C) Such other receipts generated from commissary activities, except for surcharge collections authorized by section 2484(e) of this title, as designated by the Secretary of Defense.

"(d) FUNDING OF MERCHANDISE RESALE INVENTORIES.—Prices established for resale merchandise shall include amounts sufficient to finance replenishment of inventories.".

(2) CLERICAL AMENDMENT.—The item relating to such section in the table of sections at the beginning of subchapter I of chapter 147 of such title is amended to read as follows:

"2483. Commissary stores: use of defense working capital funds to cover operating expenses and to finance resale inventories.".

(e) MERCHANDISE AND PRICING.—Section 2484 of such title is amended—

(1) by striking subsection (f);

(2) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively;

(3) by inserting after subsection (c) the following new subsection (d):

"(d) FEE FOR SERVICES.—The Secretary of Defense may apply an additional user fee for services provided to commissary customers on orders of merchandise sold in commissary stores by electronic or mobile commerce methods commonly used in the retail supermarket sector.";

(4) in subsection (c)(3)—

(A) in subparagraph (A), by striking "subsections (d) and (e)" and inserting "subsections (e) and (f)"; and

(B) in subparagraph (B), by striking "subsection (d)" and inserting "subsection (e)";

(5) in subsection (e), as redesignated by paragraph (2), by striking "subsection (e)" and inserting "subsection (f)";

(6) by amending subsection (f), as redesignated by paragraph (2), to read as follows:

"(f) SALES PRICE ESTABLISHMENT.—The Secretary of Defense shall establish the sales price of merchandise sold in, at, or by commissary stores in amounts sufficient to finance operating expenses as prescribed in section 2483(b) of this title and the replenishment of inventories.";

(7) in subsection (g)—

(A) by striking "subsections (d) and (e)" in paragraph (1) and inserting "subsections (e) and (f)"; and

(B) by striking "subsection (d)" in paragraph (2) and inserting "subsection

(e)"; and

(8) in subsection (h)—

(A) by striking "subsection (d)" each place it appears and inserting "subsection (e)"; and

(B) by striking paragraph (5).

(f) OPERATION OF COMMISSARIES.—

(1) OPERATION BY PRIVATE PERSONS.—Subsection (a) of section 2485 of such title is amended to read as follows:

"(a) OPERATION BY PRIVATE PERSONS.—

"(1) AUTHORITY.—When patron savings can be improved, or operating costs reduced, the Secretary of Defense may contract with private persons to operate selected commissary store functions.

"(2) LIMITATION.—The following functions may not be contracted for operation by a private person under paragraph (1):

"(A) Functions relating to the procurement of products to be sold in a commissary store, except for a full or substantially full product line acquired for resale from a wholesaler, distributor, or similar vendor.

"(B) Functions relating to the overall management of a commissary system or the management of a commissary store.

"(3) PERFORMANCE OF FUNCTIONS EXCLUDED FROM PERFORMANCE BY PRIVATE PERSONS.—Functions specified in paragraph (2) shall be carried out by personnel of the Department of Defense under regulations approved by the Secretary of Defense.".

(2) CONTRACTS WITH OTHER AGENCIES AND INSTRUMENTALITIES.—Subsection

(b) of such section is amended—

(A) by striking "(1)" before "The Defense";

(B) by inserting "goods or" after "provide or obtain";

(C) by striking "service provided by the United States Transportation Command" and inserting "good or service provided by any entity of the United States in"; and

(D) by striking paragraph (2).

(3) REPEAL OF SUPERCEDED PROVISIONS.—Such section is further amended—

(A) in subsection (g), by striking paragraphs (3), (4), and (5); and

(B) in subsection (h), by striking paragraph (5).

(4) CONFORMING CROSS-REFERENCE AMENDMENTS.—Paragraphs (3) and (4) of subsection (e) of such section are amended by striking "section 2484(d)" and inserting "section 2484(e)".

(g) REPEAL OF OBSOLETE AUTHORITY.—

(1) IN GENERAL.—Section 2685 of such title is repealed.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 159 of such title is amended by striking the item relating to section 2685.

(h) OVERSEAS TRANSPORTATION.—Section 2643(b) of such title is amended—

(1) in the first sentence, by striking "appropriated funds" and inserting "defense working capital funds"; and

(2) in the second sentence—

(A) by striking "also"; and

(B) by inserting "commissary and" after "transporting".

(i) SUPERVISION OF COMMISSARY CONSTRUCTION PROJECTS.—Section 2851(b) of such title is amended by adding at the end the following new sentence: "However, a project for the construction of a commissary store, a commissary central product processing facility, or a shopping mall or similar facility for a commissary store and one or more nonappropriated fund instrumentality activities authorized under section 2484(h) of this title may be accomplished under the direction and supervision of the Director of the Defense Commissary Agency.".

Section-by-Section Analysis

This proposal is a preliminary step toward changing the Defense Commissary Agency (DeCA) to allow it to become partially self-sustaining, enabling a phased budgetary reduction totaling $1 billion annually by fiscal year (FY) 2017. This concept envisions the continuation of appropriations to support commissary operations outside the Continental United States and at remote and isolated locations within the contiguous United States. It would provide for the continued operation of commissaries, through revenue generation, at other locations within the United States, albeit with reduced savings for military patrons worldwide. In order to make this concept work, military commissaries must be allowed to sell products at a markup, in lieu of the current "at cost" requirement to maximize the potential to cover operating costs. The revenue generated from the sale of goods and services would augment DeCA's annual appropriation. The Department intends to continue to study possible business models for commissaries to ensure partial self-sustainability and to assess what additional refinements may be appropriate.

Legislative changes required include the expansion of the 10 U.S.C. 2304(c) authority to purchase all items for resale, not just "brand-name" items, without resorting to full and open competition. This expansion of authority would allow DeCA to obtain both branded and non-branded commercial items using limited competitive means, either directly from a manufacturer or producer or from a wholesaler or distributor. DeCA would operate in a more business-like fashion as it seeks to obtain goods and services from the most advantageous source by using a limited competition to award its Resale Ordering Agreement (a type of Basic Ordering Agreement instrument authorized by the Federal Acquisition Regulations) in lieu of the more formal full and open competition required for most procurements under that regulation.

Recognizing that many of the commissaries of the future will exist like a partially appropriated funded version of an exchange, this proposal would amend section 2481 of title 10 by removing the sale "at reduced prices" provision affording military families access to commissaries.

The proposal would amend section 2482 of title 10 by revising the commissary establishment criteria, limiting the current needs of active-duty members and their families criteria to commissaries outside of the United States and placing emphasis on the ability to

recover costs in the United States as being the primary factor for consideration. Likewise, the ability to recover costs and the effect of the closure on military families who use the store would become one of the primary closure criteria.

Because of the need to operate commissaries overseas and at remote and isolated locations in the United States, this proposal would continue DeCA's existence, under section 2483 of title 10, as a section 2208 defense working capital fund entity instead of transforming it into a nonappropriated funded instrumentality. While its expenses to fund operations overseas and at remote and isolated installations in the United States will be funded from appropriations to the defense working capital fund, this proposal would recognize DeCA's partial self-sustaining requirement by allowing revenue generation from the markup of goods and services sold through the commissary system and from other authorized sources to fund the operation of the remaining stores in the United States. The proposal also would modify the second destination transportation language to conform to the requirement in section 2643 of title 10 (as revised by this proposal) to ensure that commissaries and exchanges are treated identically in determining where appropriated funds may be used to support transportation outside of the continental United States. Finally, the proposal would specify that several other sources of income currently deposited into the surcharge trust revolving fund would henceforth be deposited to the defense working capital fund to offset operating costs.

Enabling the collection of revenue to offset operating costs, this proposal would amend section 2484 to eliminate the requirement to sell at cost and require items be priced so that when combined with other appropriations, DeCA would cover its entire operating cost. It also would eliminate the requirement that only those brand name items sold in regional or national retail chains may be acquired under the section 2304(c)(5) of title 10 exception to competition. The proposal would correct an existing oversight authorizing either DeCA or a nonappropriated fund instrumentality to contract for a joint shopping mall and transfers several sources of income (recyclables, licenses, royalties, etc.) from being deposited into the surcharge trust revolving fund to be used to augment DeCA's appropriation.

To ensure its cost-effectiveness and enable efficiencies and business-like operations, this proposal would amend section 2485 of title 10 to allow private persons, under contract with DeCA, to operate specified store functions when doing so would improve patron savings or reduce operating costs. The proposal would continue to prohibit the contracting out of the supervision of stores or the commissary system and the procurement function. However, this change would recognize that procurement of the individual items sold by commissaries could be acquired by DeCA as a complete line of products from a wholesaler, distributor or other vendor, in lieu of its current arrangements with manufacturers. The proposal would expand the previously enacted partial waiver to the Government Accountability Office opinion of November 21, 1978 known as the "Mattress Decision" to allow the purchase of goods as well as services from federal entities, enabling DeCA to purchase goods and services from the most advantageous source, whether that source is commercial or governmental, including a nonappropriated fund instrumentality, in nature. In keeping with previous provisions, and to reinforce the partial self-sustaining model, the proposal would amend section 2485 to transfer the revenue from dishonored check fees and the licensing of scanner data from the surcharge trust revolving fund to be used to the defense working capital fund.

Section 2685 of title 10, relating to use of surcharges for commissary construction, was reenacted as section 2484(h) of title 10 in 2004. The proposed technical amendment would simply repeal the now-unnecessary section 2685.

Finally, this proposal would amend section 2851 of title 10 to allow DeCA to supervise the construction of surcharge-related projects and those joint DeCA-nonappropriated fund projects it contracts for, avoiding the necessity of using service members' funds (the surcharge) as a service fee for oversight by a military service. In addition, in recent years both the Air Force and the Army Corps of Engineers have declined to continue construction contracting and supervision for DeCA projects.

Budget Implications: The table below details resource requirements and proposed reduction to appropriated funds associated with this proposal.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2015	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
DeCA	(200)	(600)	(1,000)	(1,000)	(1,000)	97X4930	WCF - Commissary Operations		22.21
Total	(200)	(600)	(1,000)	(1,000)	(1,000)				

Changes to Existing Law: This proposal would make the following changes to 10 U.S.C. 2304, 2481, 2482, 2483, 2484, 2485, 2643, 2685, and 2851:

§2304. Contracts: competition requirements

(a)(1) Except as provided in subsections (b), (c), and (g) and except in the case of procurement procedures otherwise expressly authorized by statute, the head of an agency in conducting a procurement for property or services—

(A) shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this chapter and the Federal Acquisition Regulation; and

(B) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

* * * * * *

(c) The head of an agency may use procedures other than competitive procedures only when—

* * * * * *

(5) subject to subsection (k), a statute expressly authorizes or requires that the procurement be made through another agency or from a specified source, or the agency's need is for a ~~brand-name~~ commercial item for authorized resale;

* * * * * *

§2481. Defense commissary and exchange systems: existence and purpose

(a) SEPARATE SYSTEMS.—The Secretary of Defense shall operate, in the manner provided by this chapter and other provisions of law, a world-wide system of commissary stores and a separate world-wide system of exchange stores. The stores of each system may sell~~, at reduced prices,~~ food and other merchandise to members of the uniformed services on active duty, members of the uniformed services entitled to retired pay, dependents of such members, and persons authorized to use the system under chapter 54 of this title.

(b) PURPOSE OF SYSTEMS.— The defense commissary system and the exchange system are each intended to enhance the quality of life of and provide access to products for members of the uniformed services, retired members, and dependents of such members, and to support military readiness, recruitment, and retention.

* * * * * *

~~(d) REDUCED PRICES DEFINED. In this section, the term "reduced prices" means prices for food and other merchandise determined using the price setting process specified in section 2484 of this title.~~

§2482. Commissary stores: criteria for establishment or closure; store size

(a) Primary Consideration for Establishment.—(1) The needs of members of the armed forces on active duty and the needs of dependents of such members shall be the primary consideration whenever the Secretary of Defense—

(~~1~~A) assesses the need to establish a commissary store outside the United States; and

(~~2~~B) selects the actual location for the store.

(2) The feasibility of cost recovery shall be the primary consideration whenever the Secretary of Defense—

(A) assesses the need to establish a commissary store in the United States; and

(B) selects the actual location for the store.

(b) STORE SIZE.—In determining the size of a commissary store, the Secretary of Defense shall take into consideration the number of all authorized patrons of the defense commissary system who are likely to use the store.

(c) CLOSURE CONSIDERATIONS.—(1) Whenever the Secretary of Defense is assessing whether to close a commissary store, the following shall be primary considerations in such assessment:

(A) The extent by which the operation of the commissary store is able to recover costs.

(B) The effect of the closure on the quality of life of members of the armed forces on active duty and their dependents ~~referred to in subsection (a)~~ who use the store and on the welfare and security of the military community in which the commissary is located ~~shall be a primary consideration~~.

(2) Whenever assessing whether to close a commissary store, the Secretary of Defense shall also consider the effect of the closure on the quality of life of members of the reserve components of the armed forces.

(d) CONGRESSIONAL NOTIFICATION.—(1) The closure of a commissary store in the United States shall not take effect until the end of the 90-day period beginning on the date on which the

Secretary of Defense submits to Congress written notice of the reasons supporting the closure. The written notice shall include an assessment of the impact closure will have on the quality of life for military patrons and the welfare and security of the military community in which the commissary is located.

(2) Paragraph (1) shall not apply in the case of the closure of a commissary store as part of the closure of a military installation under a base closure law.

~~§2483. Commissary stores: use of appropriated funds to cover operating expenses~~

~~(a) Operation of Agency and System. Except as otherwise provided in this title, the operation of the Defense Commissary Agency and the defense commissary system shall be funded using such amounts as are appropriated for such purpose.~~

~~(b) Operating Expenses of Commissary Stores. Appropriated funds shall be used to cover the expenses of operating commissary stores and central product processing facilities of the defense commissary system. For purposes of this subsection, operating expenses include the following:~~

~~(1) Salaries and wages of employees of the United States, host nations, and contractors supporting commissary store operations.~~

~~(2) Utilities.~~

~~(3) Communications.~~

~~(4) Operating supplies and services.~~

~~(5) Second destination transportation costs within or outside the United States.~~

~~(6) Any cost associated with above-store-level management or other indirect support of a commissary store or a central product processing facility, including equipment maintenance and information technology costs.~~

~~(c) Supplemental Funds for Commissary Operations. Amounts appropriated to cover the expenses of operating the Defense Commissary Agency and the defense commissary system may be supplemented with additional funds from manufacturers' coupon redemption fees, handling fees for tobacco products, and other amounts received as reimbursement for other support activities provided by commissary activities.~~

§2483. Commissary stores: use of defense working capital funds to cover operating expenses and to finance resale inventories

(a) OPERATION OF AGENCY AND SYSTEM.—Except as otherwise provided in this title, working capital funds established under section 2208 of this title shall be used to fund the operations and merchandise resale inventories of the defense commissary system. Those working capital funds shall be credited with such amounts as are appropriated for such purposes and with receipts described in subsections (c) and (d).

(b) OPERATING EXPENSES.—Working capital funds established under section 2208 of this title shall be used to finance operating expenses of the defense commissary system and the acquisition of merchandise resale inventories. Operating expenses of the defense commissary system include the following:

(1) Salaries and wages of employees of the United States, host nations, and contractors supporting commissary store operations.

(2) Utilities.

(3) Communications.

(4) Operating supplies and services.

(5) Second destination transportation costs as authorized by section 2643 of this title.

(6) Any cost associated with above-store-level management or other indirect support of a commissary store or a central product processing facility, including equipment maintenance and information technology costs.

(c) FUNDING OF COMMISSARY OPERATIONS.—(1) The defense commissary system shall be managed with the objectives of attaining—

(A) uniform system-wide pricing; and

(B) a proportional allocation of funding sources for operating expenses.

(2) The Secretary of Defense shall seek to achieve the objective of attaining a proportional allocation of funding sources for operating expenses for the defense commissary system as follows:

(A) The Secretary shall prepare an estimation of the portion of the total operating expenses for the defense commissary system that are allocable to operations overseas and at commissaries within the United States that are designated by the Secretary for appropriated fund support.

(B) The portion of operating expenses estimated under subparagraph (A) shall be programmed to be financed through annual appropriations for defense working capital funds.

(C) The estimation of the remaining portion of operating expenses for the defense commissary system shall be financed as described in paragraph (3) and shall be used to establish prices for commissary merchandise and services consistent with the objective of attaining uniform system-wide pricing.

(3) The portion of operating expenses for the defense commissary system that are not financed from appropriations for defense working capital funds shall be financed from receipts from the following (and from the exercise of authority provided by section 2208 of this title):

(A) The sale of products.

(B) The sale of services.

(C) Such other receipts generated from commissary activities, except for surcharge collections authorized by section 2484(e) of this title, as designated by the Secretary of Defense.

(d) FUNDING OF MERCHANDISE RESALE INVENTORIES.—Prices established for resale merchandise shall include amounts sufficient to finance replenishment of inventories.

§2484. Commissary stores: merchandise that may be sold; uniform surcharges and pricing

(a) IN GENERAL.—As provided in section 2481(a) of this title, commissary stores are intended to be similar to commercial grocery stores and may sell merchandise similar to that sold in commercial grocery stores.

(b) AUTHORIZED COMMISSARY MERCHANDISE CATEGORIES.—Merchandise sold in, at, or by commissary stores may include items in the following categories:

(1) Meat, poultry, seafood, and fresh-water fish.

(2) Nonalcoholic beverages.

(3) Produce.

(4) Grocery food, whether stored chilled, frozen, or at room temperature.

(5) Dairy products.

(6) Bakery and delicatessen items.
(7) Nonfood grocery items.
(8) Tobacco products.
(9) Health and beauty aids.
(10) Magazines and periodicals.

(c) INCLUSION OF OTHER MERCHANDISE ITEMS.—(1) The Secretary of Defense may authorize the sale in, at, or by commissary stores of merchandise not covered by a category specified in subsection (b). The Secretary shall notify Congress of all merchandise authorized for sale pursuant to this paragraph, as well as the removal of any such authorization.

(2) Notwithstanding paragraph (1), the Department of Defense military resale system shall continue to maintain the exclusive right to operate convenience stores, shopettes, and troop stores, including such stores established to support contingency operations.

(3)(A) A military exchange shall be the vendor for the sale of tobacco products in commissary stores and may be the vendor for such merchandise as may be authorized for sale in commissary stores under paragraph (1). Except as provided in subparagraph (B), subsections (~~d~~e) and (~~e~~f) shall not apply to the pricing of such an item when a military exchange serves as the vendor of the item. Commissary store and exchange prices shall be comparable for such an item.

(B) When a military exchange is the vendor of tobacco products or other merchandise authorized for sale in a commissary store under paragraph (1), any revenue above the cost of procuring the merchandise shall be allocated as if the revenue were a uniform sales price surcharge described in subsection (~~d~~e).

(d) FEE FOR SERVICES.—The Secretary of Defense may apply an additional user fee for services provided to commissary customers on orders of merchandise sold in commissary stores by electronic or mobile commerce methods commonly used in the retail supermarket sector.

(~~d~~e) UNIFORM SALES PRICE SURCHARGE.—The Secretary of Defense shall apply a uniform surcharge equal to five percent-on the sales prices established under subsection (~~e~~f) for each item of merchandise sold in, at, or by commissary stores.

(~~e~~f) SALES PRICE ESTABLISHMENT.—~~(1)~~ The Secretary of Defense shall establish the sales price of ~~each item of~~ merchandise sold in, at, or by commissary stores ~~at the level that will recoup the actual product cost of the item~~ in amounts sufficient to finance operating expenses as prescribed in section 2483(b) of this title and the replenishment of inventories.

~~(2) Any change in the pricing policies for merchandise sold in, at, or by commissary stores shall not take effect until the Secretary of Defense submits written notice of the proposed change to Congress and a period of 90 days of continuous session of Congress expires following the date on which notice was received. For purposes of this paragraph, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment or recess of more than three days to a day certain are excluded in a computation of such 90-day period.~~

~~(3) The sales price of merchandise and services sold in, at, or by commissary stores shall be adjusted to cover the following:~~

~~(A) The cost of first destination commercial transportation of the merchandise in the United States to the place of sale.~~

~~(B) The actual or estimated cost of shrinkage, spoilage, and pilferage of merchandise under the control of commissary stores.~~

~~(f) Special Rule for Brand-Name Commercial Items. The Secretary of Defense may not use the exception provided in section 2304(c)(5) of this title regarding the procurement of a~~

~~brand-name commercial item for resale in, at, or by commissary stores unless the commercial item is regularly sold outside of commissary stores under the same brand name as the name by which the commercial item will be sold in, at, or by commissary stores. In determining whether a brand name commercial item is regularly sold outside of commissary stores, the Secretary shall consider only sales of the item on a regional or national basis by commercial grocery or other retail operations consisting of multiple stores.~~

(g) SPECIAL RULES FOR CERTAIN MERCHANDISE.—(1) Notwithstanding the general requirement that merchandise sold in, at, or by commissary stores be commissary store inventory, the Secretary of Defense may authorize the sale of tobacco products as noncommissary store inventory. Except as provided in paragraph (2), subsections (~~d~~e) and (~~e~~f) shall not apply to the pricing of such merchandise items.

(2) When tobacco products are authorized for sale in a commissary store as noncommissary store inventory, any revenue above the cost of procuring the tobacco products shall be allocated as if the revenue were a uniform sales price surcharge described in subsection (~~d~~e).

(h) USE OF SURCHARGE FOR CONSTRUCTION, REPAIR, IMPROVEMENT, AND MAINTENANCE.—(1)(A) The Secretary of Defense may use the proceeds from the surcharges imposed under subsection (~~d~~e) only—

(i) to acquire (including acquisition by lease), construct, convert, expand, improve, repair, maintain, and equip the physical infrastructure of commissary stores and central product processing facilities of the defense commissary system; and

(ii) to cover environmental evaluation and construction costs related to activities described in clause (i), including costs for surveys, administration, overhead, planning, and design.

(B) In subparagraph (A), the term "physical infrastructure" includes real property, utilities, and equipment (installed and free standing and including computer equipment), necessary to provide a complete and usable commissary store or central product processing facility.

(2)(A) The Secretary of Defense may authorize a nonappropriated fund instrumentality of the United States to enter into a contract for construction of a shopping mall or similar facility for a commissary store and one or more nonappropriated fund instrumentality activities. The Secretary may use the proceeds of surcharges under subsection (~~d~~e) to reimburse the nonappropriated fund instrumentality for the portion of the cost of the contract that is attributable to construction of the commissary store or to pay the contractor directly for that portion of such cost.

(3)(A) The Secretary of Defense may use the proceeds derived from surcharges imposed under subsection (~~d~~e) in connection with sales of commissary merchandise through initiatives described in subparagraph (B) to offset the cost of such initiatives.

(B) Subparagraph (A) applies with respect to initiatives, utilizing temporary and mobile equipment, intended to provide members of reserve components, retired members, and other persons eligible for commissary benefits, but without reasonable access to commissary stores, improved access to commissary merchandise.

(~~4~~) The Secretary of Defense, with the approval of the Director of the Office of Management and Budget, may obligate anticipated proceeds from the surcharges under subsection (~~d~~e) for any use specified in paragraph (1), (2), or (3), without regard to fiscal year

limitations, if the Secretary determines that such obligation is necessary to carry out any use of such adjustments or surcharges specified in such paragraph.

~~(5) Revenues received by the Secretary of Defense from the following sources or activities of commissary store facilities shall be available for the purposes set forth in paragraphs (1), (2), and (3):~~

~~(A) Sale of recyclable materials.~~

~~(B) Sale of excess and surplus property.~~

~~(C) License fees.~~

~~(D) Royalties.~~

~~(E) Fees paid by sources of products in order to obtain favorable display of the products for resale, known as business related management fees.~~

§2485. Commissary stores: operation

(a) ~~PRIVATE~~ OPERATION BY PRIVATE PERSONS.~~—Under such regulations as the Secretary of Defense may approve,~~

(1) AUTHORITY.—When patron savings can be improved, or operating costs reduced, the Secretary of Defense may contract with private persons ~~may~~ to operate selected commissary store functions.~~, except that such~~

(2) LIMITATION.—The following functions may not ~~include~~ be contracted for operation by a private person under paragraph (1):

(A) ~~f~~Functions relating to the procurement of products to be sold in a commissary store, except for a full or substantially full product line acquired for resale from a wholesaler, distributor or similar vendor. ~~or~~

(B) ~~f~~Functions relating to the overall management of a commissary system or the management of a commissary store.

(3) PERFORMANCE OF FUNCTIONS EXCLUDED FROM PERFORMANCE BY PRIVATE PERSONS.— ~~Such f~~Functions specified in paragraph (2) 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 goods or services beneficial to the efficient management and operation of the commissary system. However, the Defense Commissary Agency may not pay for any such good or service provided by any entity of the United States ~~Transportation Command~~ in 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~~e) 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~~e) 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:

* * * * * *

(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.

* * * * * *

~~(3) Amounts collected as charges imposed under paragraph (1) shall be credited to the commissary trust revolving fund~~.

~~(4) 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.~~

~~(5) 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.~~

(h) RELEASE OF CERTAIN COMMERCIALLY VALUABLE INFORMATION TO PUBLIC.—(1) 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).

(2) 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.

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

(B) 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.

(C) 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.

(D) 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~~.

* * * * * *

§2643. Commissary and exchange services: transportation overseas

(a) TRANSPORTATION OPTIONS.—The Secretary of Defense shall authorize the officials responsible for operation of commissaries and military exchanges to negotiate directly with private carriers for the most cost-effective transportation of commissary and exchange supplies to destinations outside the continental United States without relying on the Air Mobility Command, the Military Sealift Command, or the Military Traffic Management Command. Section 2631 of this title, regarding the preference for vessels of the United States or belonging to the United States in the transportation of supplies by sea, shall apply to the negotiation of contracts for sea-borne transportation under the authority of this section.

(b) PAYMENT OF TRANSPORTATION COSTS.—Section 2483(b)(5) of this title, regarding the use of ~~appropriated funds~~ <u>defense working capital funds</u> to cover the expenses of operating commissary stores, shall apply to the transportation of commissary supplies and products. Appropriated funds for the Department of Defense shall ~~also~~ be used to cover the expenses of transporting <u>commissary and</u> exchange supplies and products to destinations outside the continental United States.

~~§2685. Adjustment of or surcharge on selling prices in commissary stores to provide funds for construction and improvement of commissary store facilities~~

~~(a) Adjustment or Surcharge Authorized. Notwithstanding any other provision of law, the Secretary of Defense may, for the purposes of this section, provide for an adjustment of, or surcharge on, sales prices of goods and services sold in commissary store facilities.~~

~~(b) Use for Construction, Repair, Improvement, and Maintenance. (1) The Secretary of Defense may use the proceeds from the adjustments or surcharges authorized by subsection (a) only~~

~~(A) to acquire (including acquisition by lease), construct, convert, expand, improve, repair, maintain, and equip the physical infrastructure of commissary stores and central product processing facilities of the defense commissary system; and~~

~~(B) to cover environmental evaluation and construction costs related to activities described in paragraph (1), including costs for surveys, administration, overhead, planning, and design.~~

~~(2) In paragraph (1), the term "physical infrastructure" includes real property, utilities, and equipment (installed and free standing and including computer equipment), necessary to provide a complete and usable commissary store or central product processing facility.~~

~~(c) Advance Obligation. The Secretary of Defense, with the approval of the Director of the Office of Management and Budget, may obligate anticipated proceeds from the adjustments or surcharges authorized by subsection (a) for any use specified in subsection (b) or (d), without regard to fiscal year limitations, if the Secretary determines that such obligation is necessary to carry out any use of such adjustments or surcharges specified in subsection (b) or (d).~~

~~(d) Cooperation With Nonappropriated Fund Instrumentalities. (1) The Secretary of Defense may authorize a nonappropriated fund instrumentality of the United States to enter into~~

~~a contract for construction of a shopping mall or similar facility for a commissary store and one or more nonappropriated fund instrumentality activities. The Secretary may use the proceeds of adjustments or surcharges authorized by subsection (a) to reimburse the nonappropriated fund instrumentality for the portion of the cost of the contract that is attributable to construction of the commissary store or to pay the contractor directly for that portion of such cost.~~

~~(2) In paragraph (1), the term "construction", with respect to a facility, includes acquisition, conversion, expansion, installation, or other improvement of the facility.~~

~~(e) Other Sources of Funds for Construction and Improvements. Revenues received by the Secretary of Defense from the following sources or activities of commissary store facilities shall be available for the purposes set forth in subsections (b), (c), and (d):~~

~~(1) Sale of recyclable materials.~~

~~(2) Sale of excess and surplus property.~~

~~(3) License fees.~~

~~(4) Royalties.~~

~~(5) Fees paid by sources of products in order to obtain favorable display of the products for resale, known as business related management fees.~~

* * * * * *

§2851. Supervision of military construction projects

(a) SUPERVISION OF MILITARY DEPARTMENT PROJECTS.—* * *

(b) SUPERVISION OF DEFENSE AGENCY PROJECTS.—A military construction project for an activity or agency of the Department of Defense (other than a military department) financed from appropriations for military functions of the Department of Defense shall be accomplished by or through a military department designated by the Secretary of Defense. <u>However, a project for the construction of a commissary store, a commissary central product processing facility, or a shopping mall or similar facility for a commissary store and one or more nonappropriated fund instrumentality activities authorized under section 2484(h) of this title may be accomplished under the direction and supervision of the Director of the Defense Commissary Agency.</u>

* * * * * *