SEC. 904. STATUTORY STREAMLINING TO ENABLE DEFENSE COMMISSARY AGENCY TO BECOME PARTIALLY SELF-SUSTAINING.

(a) PURPOSE OF THE COMMISSARY SYSTEM.—Section 2481 of title 10, United States Code, 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).

(b) 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 (d) and (e).

"(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 services.

"(5) Advertising.

"(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) TRANSPORTATION COSTS.—Appropriated funds may be used to pay any costs associated with the transportation of commissary goods and supplies to overseas areas, but only to the extent that the working capital fund for commissary operations is reimbursed for the payment of such costs. The sales prices in commissary stores worldwide shall be adjusted in an equal percentage to the extent necessary to provide sufficient gross revenues from such sales to make such reimbursements.

"(d) 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.

"(e) 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.".

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

(1) by striking subsection (g);

(2) by redesignating subsection (h) as subsection (g);

(3) by amending subsections (a) through (c) to read as follows:

"(a) IN GENERAL.—Commissary stores are intended to be similar to commercial supermarkets and, except for distilled spirits, may as described in regulations issued by the Secretary of Defense, sell all merchandise and provide services similar to the merchandise sold and the services provided in commercial supermarkets. A product or service may be sold in, at, or by a commissary store only if the product or service is commissary store inventory or is authorized for sale by a third party under an agreement or contract with the Defense Commissary Agency.

"(b) 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.

"(c) FEE ASSESSED ON SINGLE USE CARRYOUT BAGS.—(1) Notwithstanding any other fee or surcharge imposed by this chapter a ten cent charge shall be imposed on each single use carryout bag provided to a customer. A 'single use carryout bag' means a paper or plastic bag provided to a customer at the point of sale and intended for a single use for carrying tangible personal property purchased. A single use carryout bag shall not include bags used by customers inside stores, including those—

"(A) for loose bulk items such as produce, nuts, candy, meat, or fish;

"(B) for unwrapped prepared foods such as bakery goods;

"(C) for flowers, potted plants or other items where dampness may be a problem; or

"(D) to prevent damage to a good or contamination of other goods placed together in the same bag.

"(2) The provision of subsection (d) does not apply to the charge for single use carryout bags. No charge shall be assessed on a customer's own reusable carryout bag brought into the store and used to carry purchased items from the store. The proceeds from the charge for single use carryout bags shall be deposited to the defense working capital fund and used as provided in section 2483(d)(3) of this title.";

(4) by amending subsection (e) to read as follows:

"(e) 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."; and

(5) in subsection (g), as redesignated by paragraph (2)—

(A) by striking "AND" in the title and inserting "AND THE PURCHASE OF OPERATING SUPPLIES" after "MAINTENANCE";

(B) in paragraph (1)(A)—

(i) by striking "and" at the end of clause (i);

(ii) by striking the period at the end of clause (ii) and inserting "; and"; and

(iii) by adding at the end the following new clause:

"(iii) to purchase operating supplies for commissary stores.";

(C) in paragraph (2)(A)—

(i) by inserting "the Defense Commissary Agency or" after "authorize"; and

(ii) by inserting before the period at the end the following: "or

authorize the Defense Commissary Agency to be reimbursed by a nonappropriated fund instrumentality for the portion of the cost of the contract that is attributable to construction of a nonappropriated fund facility".

(g) OPERATION OF COMMISSARIES.—Section 2485 of such title is amended—

(1) by striking subsection (d);

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

(3) by amending subsection (a) 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.

"(4) DEMONSTRATION PROJECT.—The Secretary of Defense may conduct a demonstration project in accordance with this section, in no more than two regions in the United States selected by the Secretary, for purpose of testing the viability of the Defense Commissary Agency using a contractor to order, receive, service, and manage the produce departments in military commissaries as part of a contract for produce items. All products covered by this project would be provided and owned by the contractor until such time as the product is sold.

"(5) DEMONSTRATION PROJECT PROCUREMENT PROCEDURES.—As part of the demonstration project under paragraph (4), the Secretary of Defense may conduct a competition in which there is a provision in contract solicitations and request for proposal documents to—

"(A) obtain a reliable, effective contractor provided workforce, in lieu of Government employees, to order, receive, service and manage a commissary produce department; and

"(B) for a base period of not less than two years, with a further provision for not more than three one-year option periods.

"(6) EVALUATION OF DEMONSTRATION PROJECT.—The Secretary shall evaluate the demonstration project for the following:

"(A) The costs and benefits of including contractor provided labor in the cost of goods sold.

"(B) The program's potential as a revenue generating activity to offset commissary operating costs, while maximizing patron savings.

"(C) Improvement in the quality of produce provided.

"(D) Customer satisfaction with the demonstration project.

"(7) REPORT.—Not later than two years after implementation of the demonstration project begins, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the demonstration project. The report shall contain—

"(A) the evaluation required by paragraph (6); and

"(B) recommendations on whether permanent authority should be provided to use contractor provided labor to operate military commissary produce departments.

"(8) CONTINUATION OF DEMONSTRATION PROJECT.—If the Secretary recommends in the report under paragraph (7) that permanent authority should be provided, the Secretary may continue the demonstration project for up to three years after submitting the report.

"(9) DEFINITION.—In paragraph (4), the term 'region' means the geographical area of the United States currently served by a Defense Commissary Agency produce supplier."; and

(4) in subsection (b)—

(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).

(h) REPEAL OF OBSOLETE AUTHORITY.—

(1) IN GENERAL.—Sections 2488 and 2685 of such title are repealed.

(2) CLERICAL AMENDMENTS.—(A) The table of sections at the beginning of subchapter II of chapter 147 of such title is amended by striking the item relating to section 2488.

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

(i) AUTHORITY TO PURCHASE BEER AND WINE.—

(1) IN GENERAL.—Subsection (d)(1) of section 2495 of such title is amended by inserting before the period the following: "and purchases of beer and wine by the Defense Commissary Agency with funds from the defense working capital resale stock fund".

(2) CLERICAL AMENDMENTS.—

(A) SECTION HEADING.—The heading of such section is amended to read as follows:

"§ 2495. Defense retail system: purchase of alcoholic beverages".

(B) TABLE OF SECTIONS.—The item relating to such section in the table of sections at the beginning of subchapter III of chapter 147 of such title is amended to read as follows:

"2495. Defense retail system: purchase of alcoholic beverages.".

(j) TREATMENT OF UNITED STATES WINES IN OVERSEAS COMMISSARY STORES.—

(1) IN GENERAL.—Section 2495a of such title is amended—

(A) by striking "nonappropriated fund" and inserting "defense retail"; and

(B) by inserting ", and each commissary store located outside the United States that sells wine," after "outside the United States".

(2) CLERICAL AMENDMENTS.—

(A) SECTION HEADING.—The heading of such section is amended to read as follows:

"§ 2495a. Overseas package stores and commissaries: treatment of United States wines".

(B) TABLE OF SECTIONS.—The item relating to such section in the table of sections at the beginning of subchapter III of chapter 147 of such title is amended to read as follows:

"2495a. Overseas package stores and commissaries: treatment of United States wines.".

(k) MODIFICATION OF BERRY AMENDMENT.—Section 2533a(g) of such title is amended by inserting before the period the following: ", or for the operating supplies necessary to complete the resale of such items so purchased".

(l) OVERSEAS TRANSPORTATION.—Section 2643(b) of such title is amended by striking the first sentence and inserting "Defense working capital funds may be used to cover the transportation costs of commissary supplies and products as provided in Section 2483(c) of this title.".

(m) REPAIR AND MAINTENANCE OF COMMISSARY FACILITIES.—Section 2682(a) of such title is amended by adding at the end the following new sentence: "However, any maintenance and repair project for a commissary store or a commissary central product processing facility may be accomplished under the direction and supervision of the Director of the Defense Commissary Agency.".

(n) 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(g) of this title may be accomplished under the direction and supervision of the Director of the Defense Commissary Agency.".

(o) SERVICE CONTRACT ACT EXEMPTIONS.—Section 6702(b) of title 41, United States Code, is amended by adding at the end the following new paragraph:

"(8) A contract with an entity of the defense retail systems, the principal purpose of which is the sale of goods or services to authorized beneficiaries. The term "defense retail systems" means the defense commissary system and exchange stores system and other revenue-generating facilities operated by nonappropriated fund instrumentalities of the Department of Defense for the morale, welfare, and recreation of members of the armed forces.".

Section-by-Section Analysis

This proposal would allow the Defense Commissary Agency (DeCA) to become partially self-sustaining, enabling a phased budgetary reduction totaling $1 billion annually by fiscal year (FY) 2017, by (1) eliminating the current "sale-at-cost" model allowing current items to be sold at a markup; (2) enabling additional revenue generation by authorizing the sale of additional goods and services on more profitable lines, such as beer, wine and tobacco products; and (3) allowing a more business-like approach to DeCA's operation by lifting certain regulatory restrictions which apply to many Governmental entities. This concept envisions the continuation of appropriations to support commissary operations outside the United States and at remote and isolated locations within the United States. It would provide for the continued operation of commissaries at other locations within the United States, albeit with reduced savings for military patrons worldwide.

The Department requires approval of five particular enabling proposals for FY 2016 to begin allow DeCA to begin a phased transition to business-like operations. In the remaining analysis below, we identify these five enabling proposals with an FY 2016 annotation. The Department's other recommended changes to legislation are needed in subsequent years to allow DeCA to properly plan and size near-term and long-term operations to approach partial self-sustainment.

Recognizing the Department's responsibility to ensure that military personnel and their families have access to food and household necessities, commissaries are continued as an appropriated funded obligation. In order to make the partially self-sustaining concept work, however, military commissaries must be allowed to operate like and sell the same product lines as commercial supermarkets, except for distilled spirits, at a markup, in lieu of the current "at

cost" requirement and maximize the potential to reduce operating costs. The revenue generated from the sale of goods and services would augment DeCA's annual appropriation. Utilizing a "profit-based" operating concept, the Department expects to maintain a lower level of patron savings on the goods and services purchased.

Providing this business-like operating flexibility is much more conducive to maximizing patron savings and avoids the additional "tax" to a patron's purchases impression, if off-setting DeCA's operating costs was merely to be achieved through the imposition of surcharge increases. Likewise, the Department recognizes the cost efficiency and effectiveness culture exhibited since DeCA's implementation in October 1991, and realizes that most available cost reductions through operational efficiencies have been achieved and that significant budgetary reductions from reorganization efforts are unlikely without statutory change.

Recognizing that the commissary of the future will exist like a partially appropriated funded version of an exchange, rather than as an element of compensation, this proposal would amend section 2481 of title 10 by removing the sale "at reduced cost" 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 the primary closure criteria, eliminating the current welfare of the military community standard.

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. This will result in the goods sold in all commissaries to be marked using a uniform system-wide pricing methodology. In keeping with the business-like operations' theme of this concept, the proposal would authorize the expenditure of funds for DeCA to advertise to authorized commissary customers through electronic messaging or in installation newspapers or other military family-targeted publications. The ability to advertise may become critical in demonstrating the continued value a partially self-sustaining commissary maintains over civilian commercial stores, which entice shoppers with advertised loss-leaders.

Beginning in FY 2016, the proposal also would modify the second destination transportation language to treat overseas transportation costs for commissary goods and supplies like transportation costs within the United States by transferring those costs to the commissary patron in the price of goods. The costs would be spread across commissary items worldwide,

rather than on overseas goods, to standardize the value of the commissary benefit to all customers. Effectively, personnel purchasing goods in the United States subsidize the cost of transporting goods overseas. A conforming amendment is also required to section 2643 of title 10.

Beginning in FY 2016, the proposed changes to section 2484 of title 10 would emphasize that commissaries are to operate like and, except for distilled spirits, sell similar goods and services, including internet or mobile commerce orders, similar to those provided by commercial supermarkets. Accordingly, the proposal would eliminate the current authorized categories list and the purchase of items through exchanges, including the consignment of tobacco products.

Beginning in FY 2016, the proposal would authorize commissary customers to be assessed a ten cent fee for each single use plastic or paper bag furnished at the checkout register, like many State, local and foreign jurisdictions who are starting to impose a fee on single use bags.

Beginning in FY 2016, the proposal would also transfer the cost of obtaining all supplies required for the day-to-day operation of commissaries and store-level offices dedicated to supporting commissary operations, from the defense working capital fund to the surcharge account.

Because profit margins and price elasticity in the retail grocery sector are complex calculations, price changes to maintain competitiveness, involve much more than simply increasing the price of all products by a stated percentage. Instead, higher margin items such as fresh meat and produce will have higher mark-ups, than the lower margin canned goods. The proposal would correct an existing oversight authorizing either DeCA or a nonappropriated fund instrumentality to contract for a joint shopping mall.

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. To determine the feasibility of reducing operating costs and assess the potential of revenue generation under a partial cost recovery model, the Secretary is authorized to allow DeCA to conduct a two-year demonstration project, using a supply type contract, in up to two of DeCA's contracted produce regions in the United States allowing the contractor not only to supply the produce to be sold, but also to operate the commissary produce department, including the furnishing of the labor necessary to service the produce provided to the commissary, with all contractor costs, both for goods sold and the labor furnished to be included in the cost of goods sold. Greater efficiency is expected as the produce contractor applies its expertise in management of the produce section. The demonstration project is expected to maximize the revenue generated to offset operating costs, increase the expertise in

produce management and improve quality through the contractors' ownership of the produce. It 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. It would eliminate the statutory authorization for a nonappropriated fund-operated commissary, as such an operation would be inconsistent with fiscal law principals in allowing a nonappropriated funded entity access to or control over defense working capital funds.

Section 2488 of title 10, relating to a previously unsuccessful and obsolete combined commissary and exchange model, is inconsistent with the current partially self-sustaining commissary concept. This proposal would repeal that section.

Consistent with the authorization to carry all items, except distilled spirits, commonly sold in commercial supermarkets, this proposal would amend sections 2495 and 2495a of title 10 to authorize DeCA to purchase beer and wine for resale on the same basis as a nonappropriated fund activity.

Section 2533a of title 10, commonly referred to as the Berry Amendment, currently contains a provision authorizing the off-shore procurement of commissary, exchange and nonappropriated fund instrumentality resale goods. This proposal would modify that provision to allow the entities of the military resale system to purchase operating supplies, such as bags, meat trays, and plastic wrap, necessary to facilitate the resale of items currently authorized to be procured from sources outside the United States. This would provide a further reduction in the cost of transportation of such supplies which are currently procured in the United States.

Section 2682 of title 10, would be amended to clarify that the Secretary can designate the Director, Defense Commissary Agency to conduct repair and maintenance on commissary stores or central commissary product processing facilities whether paid for with surcharge or defense working capital funds, in lieu of designating a military department to do so. In addition, in recent years where installations have provided repair and maintenance service, there cost has come at a premium, placing a further burden on both surcharge dollars and appropriated fund operating expenses.

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

Section 2851 of title 10 would be amended 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.

Finally, beginning in FY 2016, this proposal would amend section 6702(b) of title 41, to exempt military resale entities (commissaries, exchanges and military morale, welfare and recreation nonappropriated fund) from the provisions of the Service Contract Act of 1965. Military resale activities often leverage the capital and expertise of private sector companies to provide services to authorized patrons. The cost of the services provided by private sector companies to authorized patrons pursuant to such contracts reflects the labor rates and administrative costs associated with Service Contract Act compliance. Those same businesses, if operated outside the gate in the civilian community, are not required to comply with the Service Contract Act. An increased resale product price is imposed in delis and fish markets because of Service Contract Act wage determinations. Since this new operating concept would result in an approximate 70 percent reduction in DeCA's current budget, requiring that the Agency become largely self-sustaining with appropriated fund support only for stores overseas and in remote and isolated locations within the United States, relief from the Service Contract Act requirements would ensure that commissary patrons do not forfeit an even larger percentage of savings on commissary purchases by being forced to also bear the cost of this programs through the prices of the products they buy.

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

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2016	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
DeCA	(322)	(1000)	(1000)	(1000)	(1000)	Working Capital Fund	Commissary Operations		22.21
Total	(322)	(1000)	(1000)	(1000)	(1000)				

Changes to Existing Law: This proposal would make the following changes to 10 U.S.C. 2481, 2482, 2483, 2484, 2485, 2488, 2495, 2495a, 2533a, 2643, 2682, 2685, and 2851 and 41 U.S.C. 6702:

TITLE 10

§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 <u>each</u> intended to enhance the quality of life of <u>and provide access to products for</u> 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 assessing whether to close a commissary store, the effect of the closure on the quality of life of members and 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.~~ 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.

(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.

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~~**§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 (d) and (e).

(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 services

(5) Advertising.

(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) TRANSPORTATION COSTS.—Appropriated funds may be used to pay any costs associated with the transportation of commissary goods and supplies to overseas areas, but only to the extent that the working capital fund for commissary operations is reimbursed for the payment of such costs. The sales prices in commissary stores worldwide shall be adjusted in an equal percentage to the extent necessary to provide sufficient gross revenues from such sales to make such reimbursements.

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

(A) uniform system-wide pricing; and

(B) 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.

(e) 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) and (e) 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).~~

(a) IN GENERAL.—Commissary stores are intended to be similar to commercial supermarkets and, except for distilled spirits, may as described in regulations issued by the Secretary of Defense, sell all merchandise and provide services similar to the merchandise sold and the services provided in commercial supermarkets. A product or service may be sold in, at, or by a commissary store only if the product or service is commissary store inventory or is authorized for sale by a third party under an agreement or contract with the Defense Commissary Agency.

(b) 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.

(c) FEE ASSESSED ON SINGLE USE CARRYOUT BAGS. (1) Notwithstanding any other fee or surcharge imposed by this chapter a ten cent charge shall be imposed on each single use carryout bag provided to a customer. A "single use carryout bag" means a paper or plastic bag provided to a customer at the point of sale and intended for a single use for carrying tangible personal property purchased. A single use carryout bag shall not include bags used by customers inside stores, including those—

(A) for loose bulk items such as produce, nuts, candy, meat, or fish;

(B) for unwrapped prepared foods such as bakery goods;

(C) for flowers, potted plants or other items where dampness may be a problem; or

(D) to prevent damage to a good or contamination of other goods placed together in the same bag.

(2) The provision of subsection (d) does not apply to the charge for single use carryout bags. No charge shall be assessed on a customer's own reusable carryout bag brought into the store and used to carry purchased items from the store. The proceeds from the charge for single use carryout bags shall be deposited to the defense working capital fund and used as provided in section 2483(d)(3) of this title.

(d) 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) for each item of merchandise sold in, at, or by commissary stores.

~~(e) 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.~~

~~(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.~~

(e) 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.

(f) PROCUREMENT OF COMMERCIAL ITEMS USING PROCEDURES OTHER THAN COMPETITIVE.—The Secretary of Defense may use the exception provided in section 2304(c)(5) of this title for the procurement of any commercial item (including brand-name and generic items) for resale in, at, or by commissary 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) and (e) 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).~~

(~~h~~g) USE OF SURCHARGE FOR CONSTRUCTION, REPAIR, IMPROVEMENT, ~~AND~~ MAINTENANCE AND THE PURCHASE OF OPERATING SUPPLIES.—(1)(A)The Secretary of Defense may use the proceeds from the surcharges imposed under subsection (d) 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~~.~~; and

(iii) to purchase operating supplies for commissary stores.

(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 the Defense Commissary Agency or 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) 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 or authorize the Defense Commissary Agency to be reimbursed by a nonappropriated fund instrumentality for the portion of the cost of a contract that is attributable to construction of a nonappropriated fund facility.

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§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.~~

(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.

(4) DEMONSTRATION PROJECT.—The Secretary of Defense may conduct a demonstration project in accordance with this section, in no more than two regions in the United States selected by the Secretary, for purpose of testing the viability of the Defense Commissary Agency using a contractor to order, receive, service, and manage the produce departments in military commissaries as part of a contract for produce items. All products covered by this project would be provided and owned by the contractor until such time as the product is sold.

(5) DEMONSTRATION PROJECT PROCUREMENT PROCEDURES.—As part of the demonstration project under paragraph (4), the Secretary of Defense may conduct a competition in which there is a provision in contract solicitations and request for proposal documents to—

(A) obtain a reliable, effective contractor provided workforce, in lieu of Government employees, to order, receive, service and manage a commissary produce department; and

(B) for a base period of not less than two years, with a further provision for not more than three one-year option periods.

(6) EVALUATION OF DEMONSTRATION PROJECT.—The Secretary shall evaluate the demonstration project for the following:

(A) The costs and benefits of including contractor provided labor in the cost of goods sold.

(B) The program's potential as a revenue generating activity to offset commissary operating costs, while maximizing patron savings.

(C) Improvement in the quality of produce provided.

(D) Customer satisfaction with the demonstration project.

(7) REPORT.—Not later than two years after implementation of the demonstration project begins, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the demonstration project. The report shall contain—

(A) the evaluation required by paragraph (6); and

(B) recommendations on whether permanent authority should be provided to use contractor provided labor to operate military commissary produce departments.

(8) CONTINUATION OF DEMONSTRATION PROJECT.—If the Secretary recommends in the report under paragraph (7) that permanent authority should be provided, the Secretary may continue the demonstration project for up to three years after submitting the report.

(9) DEFINITION.—In paragraph (4), the term "region" means the geographical area of the United States currently served by a Defense Commissary Agency produce supplier.

(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 ~~service provided by the United States Transportation Command~~ good or service provided by any entity of the United States 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.

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~~(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~~d) 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.

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(~~f~~e) DONATION OF UNUSABLE FOOD.—(1) The Secretary of Defense may donate food described in paragraph (2) to any of the following entities:

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(~~g~~f) 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.

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(~~h~~g) 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).

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~~§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 nonappropriated 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 nonappropriated 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 "nonappropriated 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.~~

§2495. ~~Nonappropriated fund instrumentalities~~ <u>Defense retail system</u>: purchase of alcoholic beverages

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(d) In this section:

(1) The term "covered alcoholic beverage purchases" means purchases of alcoholic beverages by a nonappropriated fund instrumentality of the Department of Defense with nonappropriated funds <u>and purchases of beer and wine by the Defense Commissary Agency with funds from the defense working capital resale stock fund</u>.

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§2495a. Overseas package stores <u>and commissaries</u>: treatment of United States wines

The Secretary of Defense shall ensure that each ~~nonappropriated-fund~~ <u>defense retail</u> activity engaged principally in selling alcoholic beverage products in a packaged form (commonly referred to as a "package store") that is located at a military installation outside the United States<u>, and each commissary store located outside the United States that sells wine,</u> shall give appropriate treatment with respect to wines produced in the United States to ensure that such wines are given, in general, an equitable distribution, selection, and price when compared with wines produced by the host nation.

§2533a. Requirement to buy certain articles from American sources; exceptions

(a) REQUIREMENT.—Except as provided in subsections (c) through (h), funds appropriated or otherwise available to the Department of Defense may not be used for the procurement of an item described in subsection (b) if the item is not grown, reprocessed, reused, or produced in the United States.

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(g) EXCEPTION FOR COMMISSARIES, EXCHANGES, AND OTHER NONAPPROPRIATED FUND INSTRUMENTALITIES.—Subsection (a) does not apply to items purchased for resale purposes in commissaries, exchanges, or nonappropriated fund instrumentalities operated by the Department of Defense<u>, or for the operating supplies necessary to complete the resale of such items so purchased</u>.

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§2643. Commissary and exchange services: transportation overseas

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

§2682. Facilities for defense agencies

(a) MAINTENANCE AND REPAIR.—Subject to subsection (c), the maintenance and repair of a real property facility 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 will be accomplished by or through a military department designated by the Secretary of Defense. However, any maintenance and repair project for a commissary store or a commissary central product processing facility may be accomplished under the direction and supervision of the Director of the Defense Commissary Agency.

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~~**§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

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(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(g) of this title may be accomplished under the direction and supervision of the Director of the Defense Commissary Agency.</u>

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TITLE 41

§ 6702 - Contracts to which this chapter applies

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(b) EXEMPTIONS**.—**This chapter does not apply to—

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<u>(8) a contract with an entity of the defense retail systems, the principal purpose of which is the sale of goods or services to authorized beneficiaries. The term "defense retail systems" means the defense commissary system and exchange stores system and other revenue-generating facilities operated by nonappropriated fund instrumentalities of the Department of Defense for the morale, welfare, and recreation of members of the armed forces.</u>