

1 **SEC. \_\_\_\_ . ADDITIONAL SOURCES OF FUNDS AVAILABLE FOR CONSTRUCTION,**  
2 **REPAIR, IMPROVEMENT, AND MAINTENANCE OF COMMISSARY**  
3 **STORES.**

4 Section 2484(h) of title 10, United States Code, is amended—

5 (1) in paragraph (5), by adding at the end the following new subparagraphs:

6 “(F) Contributions for any purpose set forth in paragraph (1) in connection with a  
7 host nation country-to-country agreement.

8 “(G) Amounts appropriated for repair or reconstruction of a commissary store in  
9 response to a disaster or emergency.”; and

10 (2) by adding at the end the following new paragraph:

11 “(6) In addition to the revenues specified in paragraph (5) deposited into the account used  
12 for commissary store surcharge collections, amounts may be transferred to such account from the  
13 following sources and used for the purposes set forth in paragraphs (1), (2), and (3):

14 “(A) Balances in non-appropriated and appropriated fund accounts of the  
15 Department of Defense, including Defense Working Capital Fund accounts, derived from  
16 improved management practices implemented pursuant to sections 2481(c)(3), 2485(b),  
17 and 2487(c) of this title.

18 “(B) Balances in Defense Working Capital Fund commissary operations accounts  
19 derived from the variable pricing program implemented pursuant to subsection (i).”.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how  
the legislative text would amend existing law.]**

### **Section-by-Section Analysis**

This proposal would provide the Defense Commissary Agency (DeCA) with greater flexibility in addressing commissary store construction, renovation, repairs, and upgrades by allowing DeCA to deposit additional revenues into the surcharge account established pursuant to

section 2484 of title 10, United States Code (section 2484) or, in the case of funds from foreign countries provided to the U.S. under burden-sharing agreements, directly obligate those funds. The additional revenues that can be deposited into the surcharge account under this proposal are: (1) funds derived from improved management practices, including newly established business arrangements or processes with exchange stores, (2) profits from variable pricing, (3) contracts with other agencies and instrumentalities, and (4) funds received as assistance for repair or reconstruction of a commissary store in connection with a disaster or emergency. The proposal would also allow DeCA to directly obligate funds provided by a host nation for a new commissary store in accordance with a country-to-country agreement.

Section 2483(c) allows DeCA to supplement its funding for operating costs with funds generated through improved management practices with exchange stores in accordance with sections 2481(c)(3) and 2487(c), as well as proceeds from variable pricing as authorized under section 2484(i). However, these funds cannot currently be used for expenses funded by the surcharge account, such as store sustainment expenses, construction, and environmental upgrades to commissary stores and distribution centers. This proposal would authorize these funds and proceeds to be used for either of these purposes.

The amendments to section 2484(h) made by this proposal provide a means for the funds of a host nation and a Service to be directly obligated by the surcharge account when a new commissary store is constructed based upon the request of the host nation. Currently, when a host nation requests the United States to relocate a commissary store, the host nation provides funds for the relocation; if the host nation contribution is insufficient to complete the relocation, the responsible Service is required to fund the difference. The host nation funds are deposited into DOD and/or Treasury accounts and made available for relocation activities pursuant to sections 2350j and 2350k. The responsible Service arranges contracts and obligates funds on behalf of DeCA to relocate the commissary facilities. This process requires DeCA to coordinate all activity through a military Service instead of working directly with vendors to relate commissary facilities. The proposed amendments would allow the Surcharge account to directly obligate host nation contributions and Services funds from the DOD/Treasury accounts, which would allow the commissary system the flexibility to execute requirements more economically and efficiently through the use of existing contracts. Host nation funds would continue to be deposited into, and obligated from, DOD and Treasury accounts pursuant to sections 2350j and 2350k.

In a similar fashion, repairs to a commissary store required as the result of a disaster or emergency may be funded from the surcharge account. However, DeCA currently is not permitted to deposit Federal disaster or emergency relief funds received in connection with damage to a commissary store into the surcharge account. The amendment to section 2485(h) made by this proposal addresses this shortcoming by allowing a commissary store to benefit from disaster or emergency appropriations provided for repair or reconstruction of commissary stores.

This proposal also would allow DeCA to supplement the surcharge account with funding received from Federal departments, agencies, and instrumentalities under sections 2481(c)(3), 2485(b), and 2487(c), including other agencies of the Department of Defense. This would allow

DeCA to utilize this funding for certain obligations it incurs that would normally be funded by the surcharge account (i.e., funding received for system changes required to DeCA store systems to support acceptance of the Military Star Card and funding in support of system changes required for expanded patronage for disabled veterans provided under section 1065).

Finally, this proposal would provide DeCA the ability to determine where the profits from the variable pricing initiative best serve the patrons of commissary stores and the Department of Defense. Under this proposal, the Secretary of Defense would be able to evaluate whether the margin generated under the variable pricing model should be used to offset operating expenses for the Services or to address sustainment, environmental issues, and construction or maintenance needs of commissary stores.

**Budget Implications:** No budget impact.

**Changes to Existing Law:** This proposal would make the following changes to sections 2484 of title 10, United States Code:

**§ 2484 - Commissary stores: merchandise that may be sold, uniform surcharges, and pricing**

\* \* \* \* \*

(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) 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) 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.

(B) In subparagraph (A), the term “construction”, with respect to a facility, includes acquisition, conversion, expansion, installation, or other improvement of the facility.

(3)(A) The Secretary of Defense may use the proceeds derived from surcharges imposed under subsection (d) 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) 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.

(F) Contributions for any purpose set forth in paragraph (1) in connection with a host nation country-to-country agreement.

(G) Amounts appropriated for repair or reconstruction of a commissary store in response to a disaster or emergency.

(6) In addition to the revenues specified in paragraph (5) deposited into the account used for commissary store surcharge collections, amounts may be transferred to such account from the following sources and used for the purposes set forth in paragraphs (1), (2), and (3):

(A) Balances in non-appropriated and appropriated fund accounts of the Department of Defense, including Defense Working Capital Fund accounts, derived from improved management practices implemented pursuant to sections 2481(c)(3), 2485(b), and 2487(c) of this title.

(B) Balances in Defense Working Capital Fund commissary operations accounts derived from the variable pricing program implemented pursuant to subsection (i).

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