

PRE-DECISIONAL INTERNAL EXECUTIVE BRANCH DRAFT

1 “(i) ALTERNATIVE PRICING PROGRAM.—(1) The Secretary is authorized to establish an
2 alternative pricing program pursuant to which prices may be established in response to market
3 conditions and customer demand, in accordance with the requirements of this subsection.
4 Notwithstanding the amount of the uniform surcharge assessed in subsection (d), the Secretary
5 may provide for an alternative surcharge of not more than 5 percent of sales proceeds under such
6 alternative pricing program to be made available for the purposes specified in subsection (h).

7 “(2) Before establishing an alternative pricing program under this subsection, the
8 Secretary shall establish the following:

9 “(A) Specific, measurable benchmarks for success in the provision of high quality
10 grocery merchandise, discount savings to patrons, and levels of customer satisfaction
11 while achieving savings for the Department of Defense.

12 “(B) A baseline of overall savings to patrons achieved by commissary stores prior
13 to the initiation of the alternative pricing program, based on a comparison of prices
14 charged by those stores on a regional basis with prices charged by relevant local
15 competitors for a representative market basket of goods.

16 “(3) The Secretary shall ensure that the defense commissary system implements the
17 alternative pricing program by conducting price comparisons using the methodology
18 established for paragraph (2)(B) and adjusting pricing as necessary to ensure that pricing in the
19 alternative pricing program achieves overall savings to patrons that are reasonably consistent
20 with the baseline savings established for the relevant region pursuant to such paragraph.

21 “(j) CONVERSION TO NONAPPROPRIATED FUND ENTITY OR INSTRUMENTALITY.—(1) If the
22 Secretary determines that the alternative pricing program has met the benchmarks for success
23 established pursuant to subsection (i)(2)(A) and the savings requirements established pursuant to

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1 subsection (i)(3) over a period of at least six months, the Secretary may convert the defense
2 commissary system to a nonappropriated fund entity or instrumentality, with operating expenses
3 financed in whole or in part by receipts from the sale of products and the sale of services. Upon
4 such conversion, appropriated funds shall be transferred to the defense commissary system only
5 in accordance with paragraph (2) or section 2491 of this title. The requirements of section 2483
6 shall not apply to the defense commissary system operating as a nonappropriated fund entity or
7 instrumentality.

8 “(2) If the Secretary determines that the defense commissary system operating as a
9 nonappropriated fund entity or instrumentality is likely to incur a loss in any fiscal year as a
10 result of compliance with the savings requirement established in subsection (i), the Secretary
11 shall authorize a transfer of appropriated funds available for such purpose to the commissary
12 system in an amount sufficient to offset the anticipated loss. Any funds so transferred shall be
13 considered to be nonappropriated funds for such purpose.

14 “(3) The Secretary of Defense may identify positions of employees in the defense
15 commissary system who are paid with appropriated funds whose status may be converted to the
16 status of an employee of a nonappropriated fund entity or instrumentality. The status and
17 conversion of such employees shall be addressed as provided in section 2491(c) for employees in
18 morale, welfare, and recreation programs. No individual who is an employee of the defense
19 commissary system as of the date of the enactment of this subsection shall suffer any loss of or
20 decrease in pay as a result of the conversion.”.

21 (d) ESTABLISHMENT OF COMMON BUSINESS PRACTICES.—Section 2487 of such title is
22 amended—

23 (1) by redesignating subsection (c) as subsection (d); and

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1 (2) by inserting after subsection (b) the following new subsection (c):

2 “(c) COMMON BUSINESS PRACTICES.—(1) Notwithstanding subsections (a) and (b), the
3 Secretary of Defense may establish common business processes, practices, and systems—

4 “(A) to exploit synergies between the operations of the defense commissary
5 system and the exchange system; and

6 “(B) to optimize the operations of the defense retail systems as a whole and the
7 benefits provided by the commissaries and exchanges.

8 “(2) The Secretary may authorize the defense commissary system and the exchange
9 system to enter into contracts or other agreements—

10 “(A) for products and services that are shared by the defense commissary system
11 and the exchange system; and

12 “(B) for the acquisition of supplies, resale goods, and services on behalf of both
13 the defense commissary system and the exchange system.

14 “(3) For the purpose of a contract or agreement authorized under paragraph (2), the
15 Secretary may—

16 “(A) use funds appropriated pursuant to section 2483 of this title to reimburse a
17 nonappropriated fund entity or instrumentality for the portion of the cost of a contract or
18 agreement entered by the nonappropriated fund entity or instrumentality that is
19 attributable to the defense commissary system; and

20 “(B) authorize the defense commissary system to accept reimbursement from a
21 nonappropriated fund entity or instrumentality for the portion of the cost of a contract or
22 agreement entered by the defense commissary system that is attributable to the
23 nonappropriated fund entity or instrumentality.”.

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1 (e) CLARIFICATION OF REFERENCES TO ‘THE EXCHANGE SYSTEM’.—Section 2481(a) of
2 title 10, United States Code, is amended by adding at the end the following new sentence: “Any
3 reference in this chapter to ‘the exchange system’ shall be treated as referring to each separate
4 administrative entity within the Department of Defense through which the Secretary of Defense
5 has implemented the requirement under this subsection for a world-wide system of exchange
6 stores.”.

7 (f) OPERATION OF DEFENSE COMMISSARY SYSTEM AS A NONAPPROPRIATED FUND
8 ENTITY.—In the event that the defense commissary system is converted to a nonappropriated
9 fund entity or instrumentality as authorized by section 2484(j)(1) of title 10, United States Code,
10 as added by subsection (c) of this section, the Secretary may—

11 (1) provide for the transfer of commissary assets, including inventory and
12 available funds, to the nonappropriated fund entity or instrumentality; and

13 (2) ensure that revenues accruing to the defense commissary system are
14 appropriately credited to the nonappropriated fund entity or instrumentality.

15 (g) CONFORMING CHANGE.—Section 2643(b) of such title is amended by adding at the
16 end the following new sentence: “Such appropriated funds may be supplemented with additional
17 funds derived from improved management practices implemented pursuant to sections
18 2481(c)(3) and 2487(c) of this title.”.

[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 amend sections 2481, 2483, 2484, and 2487 of title 10, United States Code, to provide the Department of Defense the flexibility to optimize management practices across the Defense resale system and allow the Defense Commissary Agency (DeCA) to begin a phased transition that reduces reliance on appropriated funding without reducing

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benefits to the systems' patrons or the revenue generated by nonappropriated fund entities or instrumentalities of the Department for the morale, welfare, and recreation (MWR) of members of the Armed Forces.

The Department believes that the improved business practices enabled by this legislation will make it possible to deliver the same level of service and savings to commissary patrons as the current system at substantially reduced cost to the taxpayer. Towards this end, the Department requires legislative changes to allow greater flexibility related to how products are sourced, where they are sold, and how they are priced in the commissaries. The current, inward-facing pricing model of the commissaries, which requires that all products be sold with a uniform surcharge of 5 percent over cost, does not incentivize efficient business management practices. A more flexible, outward-facing (commercial) pricing approach, which focuses on generating revenues through reduced cost of goods sold rather than the amount of the surcharge, could achieve the same level of savings for service members, retirees, and their families, while incentivizing efficiencies that provide significant savings.

This proposal adds a new sentence at the end of subsection (a) of section 2481. The new sentence recognizes the current reality of multiple exchange systems. It is intended to allow the current statutory usage of the singular "exchange system" to remain unchanged while accommodating the current real-world existence of multiple exchange systems.

This proposal also adds a new paragraph within subsection (c) of section 2481, directing the Secretary of Defense to develop and implement a comprehensive strategy to optimize management practices across the defense commissary and exchange systems that would reduce reliance on appropriated funding without reducing patron benefits. Savings that are produced as a result of these efforts would be appropriately shared, via appropriate contracts or agreements. Institutionalization of the optimized management practices would make it possible to better manage capital and operating expenditures, and achieve additional back-office efficiencies across the Defense resale system.

This proposal adds a sentence within subsection (c) of section 2483, specifying that appropriated amounts which cover the expenses of operating the defense commissary system may also be supplemented by additional funds derived from improved management practices and an alternative pricing program.

The proposal inserts a new subsection after subsection (h) of section 2484, authorizing the Secretary of Defense to carry out flexible pricing program on a permanent basis. Under this authority, the commissaries may utilize alternative product pricing, while ensuring that the level of savings to commissary patrons is reasonably consistent with the level of savings prior to the implementation of the alternative pricing program. The flexible pricing program would be evaluated against specific, measurable benchmarks and a documented baseline level of savings. This alternative pricing flexibility would allow stores to establish prices in response to market conditions and customer demand, as opposed to the current "sale-at-cost-plus-surcharge" model that constrains sales margins and limits potential savings benefits across disparate geographic markets.

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If the Secretary determines that the benchmarks for success (including required savings levels) have been met after a period of at least six months, a new subsection would further authorize the Secretary to convert the commissary system to a nonappropriated fund entity or instrumentality, with operating expenses financed in whole or in part by receipts from the sale of products and the sale of services. This additional flexibility is necessary to enable the phased transition that ultimately reduces the commissary system's reliance on appropriated funding. In particular, conversion of the Defense commissary system to a non-appropriated fund entity or instrumentality is necessary to enable the commissaries to develop common business systems and common business practices with the exchange systems. Non-appropriated fund status will also give the commissary system greater flexibility in contracting and hiring, enabling the commissaries to readily enter commercial-type contracts and to bring on specialized, temporary, or surge workforces on an as-needed bases. In the event that the defense commissary system is converted to a nonappropriated fund entity or instrumentality, subsection (f) of this proposal clarifies the status of its assets and funds.

Appropriated funds will still be required to ensure that the savings requirements outlined in subsection (i) are met. Those appropriated funds would be considered to be obligated when transferred to the commissaries so that they could be treated as nonappropriated funds when expended to pay the salaries for nonappropriated employees or other commissary expenses. Subsection (j) further authorizes the Secretary of Defense to identify positions of employees in the defense commissary system who are paid with appropriated funds whose status may be converted to the status of an employee of a nonappropriated fund entity or instrumentality as provided in section 2491(c) for employees in morale, welfare, and recreation programs. The subsection stipulates that no commissary employee shall suffer a reduction in pay as commissaries are converted to nonappropriated fund entities or instrumentalities, thereby protecting the current workforce's compensation benefit during any transition.

The proposal also inserts a subsection after subsection (b) of section 2487, which in turn, would redesignate subsection (c) as subsection (d). The new subsection would authorize the Secretary of Defense to establish common business processes, practices, and systems to exploit synergies between the operations of the defense commissary system and the exchange system and to optimize the operations of the defense retail system as a whole and the benefits provided by the commissaries and exchanges, including authorizing the use of both appropriated and nonappropriated funds on contracts or agreements for the acquisition of common business systems for the Defense resale system or to exploit acquisition synergies in obtaining logistical services, supplies, and resale goods and services.

Budget Implications: The table below details resource requirements associated with this proposal. The resources reflected in the table below are funded within the FY 2017 President's Budget.

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RESOURCE REQUIREMENTS (\$MILLIONS)									
	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Appropriations From	Budget Activity	Dash-1 Line Item	Program Element
DeC A	(8)	(8)	(191)	(358)	(512)	Working Capital Fund, Defense Commissary Agency	20	ES12	
Total	(8)	(8)	(191)	(358)	(512)	--	--	--	--

Development of the optimization strategy and implementation of the full range of business process enhancements enabled by this proposal, in addition to a concerted effort to exploit synergies and realize operational efficiency efforts across the entire Defense resale system, is expected to decrease the requirement for appropriated funds across the Future Years Defense Program by \$1,077,000,000. The Department expects to achieve additional efficiencies through business improvements that do not require legislation.

DCMO Priority: This proposal is critical to be enacted this cycle. This proposal is necessary to provide the Department with the flexibility to improve business practices across the Defense resale system while delivering the same level of service and savings to commissary patrons as the current system at substantially reduced cost to the taxpayer. Failure to enact this proposal this cycle will significantly delay savings that will be generated across the FYDP. It is number one of five proposals submitted by the DCMO this cycle.

Resubmission Information: This proposal is being submitted for the first time.

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Changes to Existing Law: The proposal would make the following changes to 10 U.S.C. 2463, 2481, 2483, 2484, and 2487:

TITLE 10, UNITED STATES CODE

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**CHAPTER 146—CONTRACTING FOR PERFORMANCE OF CIVILIAN
COMMERCIAL OR INDUSTRIAL TYPE FUNCTIONS AMENDMENTS**

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§ 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 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 exchange supplies and products to destinations outside the continental United States. Such appropriated funds may be supplemented with additional funds derived from improved management practices implemented pursuant to sections 2481(c)(3) and 2487(c) of this title.

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**CHAPTER 147—COMMISSARIES AND EXCHANGES AND OTHER MORALE,
WELFARE, AND RECREATION ACTIVITIES**

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§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. Any reference in this chapter to “the exchange system” shall be treated as referring to each separate administrative entity within the Department of Defense through which the Secretary of Defense has implemented the requirement under this subsection for a world-wide system of exchange stores.

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

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(c) OVERSIGHT.—(1) The Secretary of Defense shall designate a senior official of the Department of Defense to oversee the operation of both the defense resale commissary system and the exchange system.

(2) The Secretary of Defense shall establish an executive governing body to provide advice to the senior official designated under paragraph (1) regarding the operation of the defense commissary and exchange systems and to ensure the complementary operation of the systems.

(3)(A) The Secretary of Defense shall develop and implement a comprehensive strategy to optimize management practices across the defense commissary system and the exchange system that reduce reliance of those systems on appropriated funding without reducing benefits to the patrons of those systems or the revenue generated by nonappropriated fund entities or instrumentalities of the Department of Defense for the morale, welfare, and recreation of members of the armed forces.

(B) The Secretary shall ensure that savings generated due to such optimization practices are shared by the defense commissary system and the exchange system through contracts or agreements that appropriately reflect the participation of the systems in the development and implementation of such practices.

(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.

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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.

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(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. Such appropriated amounts may also be supplemented with additional funds derived from improved management practices implemented pursuant to sections 2481(c)(3) and 2487(c) of this title and the alternative pricing program implemented pursuant to section 2484(i) of this title.

* * * * *

§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).

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(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.

(f) **PROCUREMENT OF COMMERCIAL ITEMS USING PROCEDURES OTHER THAN COMPETITIVE PROCEDURES.**—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) **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.

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(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.

(i) ALTERNATIVE PRICING PROGRAM.—(1) The Secretary is authorized to establish an alternative pricing program pursuant to which prices may be established in response to market conditions and customer demand, in accordance with the requirements of this subsection. Notwithstanding the amount of the uniform surcharge assessed in subsection (d), the Secretary may provide for an alternative surcharge of not more than 5 percent of sales proceeds under such alternative pricing program to be made available for the purposes specified in subsection (h).

(2) Before establishing an alternative pricing program under this subsection, the Secretary shall establish the following:

(A) Specific, measurable benchmarks for success in the provision of high quality grocery merchandise, discount savings to patrons, and levels of customer satisfaction while achieving savings for the Department of Defense.

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(B) A baseline of overall savings to patrons achieved by commissary stores prior to the initiation of the alternative pricing program, based on a comparison of prices charged by those stores on a regional basis with prices charged by relevant local competitors for a representative market basket of goods.

(3) The Secretary shall ensure that the defense commissary system implements the alternative pricing program by conducting price comparisons using the methodology established for paragraph (2)(B) and adjusting pricing as necessary to ensure that pricing in the alternative pricing program achieves overall savings to patrons that are reasonably consistent with the baseline savings established for the relevant region pursuant to such paragraph.

(j) CONVERSION TO NONAPPROPRIATED FUND ENTITY OR INSTRUMENTALITY.—(1) If the Secretary determines that the alternative pricing program has met the benchmarks for success established pursuant to subsection (i)(2)(A) and the savings requirements established pursuant to subsection (i)(3) over a period of at least six months, the Secretary may convert the defense commissary system to a nonappropriated fund entity or instrumentality, with operating expenses financed in whole or in part by receipts from the sale of products and the sale of services. Upon such conversion, appropriated funds shall be transferred to the defense commissary system only in accordance with paragraph (2) or section 2491 of this title. The requirements of section 2483 shall not apply to the defense commissary system operating as a nonappropriated fund entity or instrumentality.

(2) If the Secretary determines that the defense commissary system operating as a nonappropriated fund entity or instrumentality is likely to incur a loss in any fiscal year as a result of compliance with the savings requirement established in subsection (i), the Secretary shall authorize a transfer of appropriated funds available for such purpose to the commissary system in an amount sufficient to offset the anticipated loss. Any funds so transferred shall be considered to be nonappropriated funds for such purpose.

(3) The Secretary of Defense may identify positions of employees in the defense commissary system who are paid with appropriated funds whose status may be converted to the status of an employee of a nonappropriated fund entity or instrumentality. The status and conversion of such employees shall be addressed as provided in section 2491(c) for employees in morale, welfare, and recreation programs. No individual who is an employee of the defense commissary system as of the date of the enactment of this subsection shall suffer any loss of or decrease in pay as a result of the conversion.

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§2487. Relationship between defense commissary system and exchange stores system

(a) SEPARATE OPERATION OF SYSTEMS.—(1) Except as provided in paragraph (2), the defense commissary system and the exchange stores system shall be operated as separate systems of the Department of Defense.

(2) Paragraph (1) does not apply to the following:

(A) Combined exchange and commissary stores operated under the authority provided by section 2489 of this title.

(B) NEXMART stores of the Navy Exchange Service Command established before October 1, 2003.

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(b) CONSOLIDATION OR OTHER ORGANIZATIONAL CHANGES OF DEFENSE RETAIL SYSTEMS.—(1) The operation and administration of the defense retail systems may not be consolidated or otherwise merged unless the consolidation or merger is specifically authorized by an Act of Congress.

(2) In this subsection, 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.

(c) COMMON BUSINESS PRACTICES.—(1) Notwithstanding subsections (a) and (b), the Secretary of Defense may establish common business processes, practices and systems—

(A) to exploit synergies between the operations of the defense commissary system and the exchange system; and

(B) to optimize the operations of the defense retail systems as a whole and the benefits provided by the commissaries and exchanges.

(2) The Secretary may authorize the defense commissary system and the exchange system to enter into contracts or other agreements—

(A) for products and services that are shared by the defense commissary system and the exchange system; and

(B) for the acquisition of supplies, resale goods, and services on behalf of both the defense commissary system and the exchange system.

(3) For the purpose of a contract or agreement authorized under paragraph (2), the Secretary may—

(A) use funds appropriated pursuant to section 2483 of this title to reimburse a nonappropriated fund entity or instrumentality for the portion of the cost of a contract or agreement entered by the nonappropriated fund entity or instrumentality that is attributable to the defense commissary system; and

(B) authorize the defense commissary system to accept reimbursement from a nonappropriated fund entity or instrumentality for the portion of the cost of a contract or agreement entered by the defense commissary system that is attributable to the nonappropriated fund entity or instrumentality.

(ed) ACCESS OF EXCHANGE STORES SYSTEM TO FEDERAL FINANCING BANK.—To facilitate the provision of in-store credit to patrons of the exchange stores system while reducing the costs of providing such credit, the Army and Air Force Exchange Service, Navy Exchange Service Command, and Marine Corps exchanges may issue and sell their obligations to the Federal Financing Bank as provided in section 6 of the Federal Financing Bank Act of 1973 (12 U.S.C. 2285).