

# NDIA 28<sup>th</sup> Annual National Logistics Conference & Exhibition

Pete Steffes  
Vice President  
Government Policy  
NDIA

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# Legislative Changes to Chapter 146 Title 10 United States Code

- The National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-329) made several changes to Chapter 146 of Title 10 United States Code that concern operations at Department of Defense maintenance and repair depots.
- NDIA is concerned that the potential unintended consequences of these changes could negatively impact DoD and industry from providing sustainable logistical support to the warfighter.
- Specific areas of concern:
  - Section 321 changes the definition of depot maintenance
  - Section 327 changes to the definition of core requirements

## Sec 2460

# Definition of Depot Maintenance

### Old

“The term ‘depot-level maintenance and repair’ means **material maintenance and repair** requiring the overhaul, upgrading, or rebuilding of parts, assemblies, or subassemblies, and the testing and reclamation Of equipment as necessary, regardless of the source of funds for the maintenance or repair or the location at which the maintenance or repair is performed. The term includes (1) all aspects of software maintenance classified by the Department of Defense as of July 1, 1995, as depot-level maintenance and repair, and (2) interim contractor support or contractor logistics support (or any similar contractor support), to the extent that such support is for the performance of Services described in the preceding sentence.”

### New

“The term “depot-level maintenance and repair”—“(1) means **any action performed on material or software** in the conduct of inspection, repair, overhaul, or the modification or rebuild of end-items, assemblies, subassemblies, and parts”

## Sec 2460

# Definition of Depot Maintenance

### Concerns:

The new language significantly expands what has been included in the definition of “depot-level maintenance and repair” which could in turn greatly expand work that previously has not been accomplished in public depots primarily due to capabilities, capacities, and/or technical data availability. This change could significantly upset the traditional balance between industry and government without due consideration to cost, capabilities, and meeting the readiness needs of the military.

The previous exceptions to the definition of the “depot-level maintenance and repair”, i.e. the procurement of major modifications or upgrades of weapon systems that are designed to improve program performance; the nuclear refueling of an aircraft carrier; and the procurement of parts for safety modifications, have been stricken. There is no authority in the new statute for the Secretary of Defense to exclude any action performed on material or software from coverage under the new definition.

## Sec 2464

# Core Depot-level Maintenance and Repair Capabilities

Old

- 1) It is essential for the national defense that the Department of Defense maintain a **core logistics** capability that is Government-owned and Government-operated (including Government personnel and Government-owned and Government-operated equipment and facilities) to ensure a ready and controlled source of technical competence and resources necessary to ensure effective and timely response to a mobilization, national defense contingency situations, and other emergency requirements.

• New

- (1) *It is essential for national security that the Department of Defense maintain a **core depot-level maintenance and repair** capability, as defined by this title, in support of mission-essential weapon systems or items of military equipment needed to directly support combatant command operational requirements and enable the armed forces to execute the strategic, contingency, and emergency plans prepared by the Department of Defense, as required under section 153(a) of this title.*

## Sec 2464

### Core Depot-level Maintenance and Repair Capabilities

- Old

(2) The Secretary of Defense shall identify the core logistics capabilities described in paragraph (1) and the workload required to maintain those capabilities. (3) The core logistics capabilities identified under paragraphs (1) and (2) shall include those **capabilities** that are necessary to maintain and repair the weapon systems and other military equipment (including mission-essential weapon systems or materiel not later than four years after achieving initial operational capability,

- New

*(2) This core depot-level maintenance and repair capability shall be Government-owned and Government-operated, including the use of Government personnel and Government-owned and Government-operated equipment and facilities, **throughout the lifecycle of the weapon system or item of military equipment involved** to ensure a ready and controlled source of technical competence and resources necessary to ensure effective and timely response to a mobilization, national defense contingency situations, and other emergency requirements.*

## Sec 2464

# Core Depot-level Maintenance and Repair Capabilities

- *New*
- *`(3)(A) Except as provided in subsection (c), (commercial items) the Secretary of Defense shall identify and establish the core depot-level maintenance and repair capabilities and capacity required in paragraph (1).*
- *`(B) Core depot-level maintenance and repair capabilities **and capacity, including the facilities, equipment, associated logistics capabilities, technical data, and trained personnel,** shall be established not later than four years after a weapon system or item of military equipment achieves initial operational capability or is fielded in support of operations.*

## Sec 2464

# Core Depot-level Maintenance and Repair Capabilities Concerns

As previously highlighted, the basis for core determinations is no longer “**logistics**”, but the term “**depot-level maintenance and repair**”. Everything included under the definition of depot-level maintenance and repair associated with a weapon system or fielded item is now subject to the requirement for the identification and establishment of a core capability and capacity in government-owned and operated facilities. Essentially, 2464 requires that “depot-level maintenance and repair “ work, irrespective of where it was performed as of 12/31/11, must be performed in a depot as a core requirement unless the requirement is waived by the Secretary of Defense. Note that any waiver of an activity or a function from the core requirements in 10 U.S.C. 2464 has no effect on what is now considered “depot-level maintenance and repair”.

## Sec 2464

# Core Depot-level Maintenance and Repair Capabilities Concerns

- The only waiver authorities (by the Secretary of Defense in all cases) included in the new section 2464 are:
  - The weapons system or item of military equipment is not an enduring element of the national defense strategy
  - Fulfilling the requirement for an aircraft nuclear refueling is not economically feasible, or
  - It is in the best interest of national security
- The Secretary of Defense may exclude Commercial Items pending a notification to Congress
- There is no waiver authority to cover the inability of a public depot to perform core workload due to capabilities, capacity, technical data, and/or cost considerations.

## 50/50 Rule

- Section 2466 of Title 10 USC states “*Not more than 50 percent of the **funds** made available in a fiscal year to a military department or a Defense Agency **for depot-level maintenance and repair workload** may be used to contract for the performance by non-Federal Government personnel of such workload for the military department or the Defense Agency*”.
- Concerns have been heard that the changes to the definition of depot-level maintenance and repair and the new Core requirements could/would/will upset the current balance between DoD and industry.
- Changing the **definition** does not change the source of **funds**.

## 50/50 Rule

- The 50/50 rule was adopted by Congress in the mid 80's (was initially 70/30, changed to 60/40, and then to the current 50/50 in the 90")
- Congress wanted to keep an consistent level of work in the depots to maintain employee and facilities viability.
- Many in Congress believe that the 50/50 rule is their only insurance policy to keep the depots fully operational.
- All efforts by previous administrations to repeal the 50/50 rule have been unsuccessful.

# 50/50 Rule

- **50/50 Myths and Facts:**

- The new legislation does not change or modify the 50/50 rule.
- Changing who/where modifications and upgrades are performed will have no impact on 50/50. Modifications and upgrades are funded with procurement dollars. Therefore, even if a public depot were to perform the modifications and upgrades paid for with procurement dollars, the 50/50 rule does not currently and would not apply under the new legislation.
- The refueling of a nuclear aircraft carrier, irrespective of where the work is performed, is funded with procurement dollars, the 50/50 rule does not currently and would not apply under the new legislation.
- The 50/50 rule does not allow the DoD to manage depot workloads in an efficient and cost effective manner.

# Questions - Comments

Pete Steffes  
psteffes@ndia.org

(703) 247 9470

