



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

APR 05 2012

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: National Defense Authorization Act for Fiscal Year 2012 Implementation Guidance for Depot-Level Maintenance

Subtitle C of Title III of the National Defense Authorization Act for Fiscal Year 2012 (NDAA FY 2012) amended title 10, United States Code (U.S.C.), in several areas that significantly impact our planning, performance, and reporting of depot-level maintenance. The amended statutes are 10 U.S.C. § 2460, 10 U.S.C. § 2464, 10 U.S.C. § 2366 and 10 U.S.C. § 2474. The purpose of this memorandum is to provide a standard DoD-wide interpretation and guidance related to the revised language in these statutes and to delegate the waiver authority provided for at 10 U.S.C. § 2464(b)(1)(A) and (B), as enacted in section 327 of the NDAA FY 2012, relating to the determination that a weapon system or item of military equipment is not an enduring element of the national defense strategy and that, in the case of nuclear aircraft carrier refueling, fulfilling the requirement is not economically feasible.

I hereby delegate to the Service Secretaries the authority to grant the waiver provided for at 10 U.S.C. § 2464(b)(1)(A) and (B). This delegation is effective immediately, will stay in effect as long as the relevant statutory language remains unmodified by subsequent enactments, and may be further redelegated to each Service's Acquisition Executive. The implementation guidance is provided in the attachment. The Department's position is that the appropriate use of waivers and the implementation guidance will enable depot maintenance activities to remain consistent with past practices.

The Department will address the scope, intent, and implications of this language with Congress and provide the Services further guidance as necessary. This memorandum supersedes the previous NDAA FY 2012 Implementation Guidance for Depot-Level Maintenance, dated April 3, 2012.

Frank Kendall
Acting

Attachment:
As stated

10 U.S.C. § 2460 - Definition of depot-level maintenance and repair

Language: *Removes the exception for modifications and adds that the definition of depot-level maintenance and repair includes, “In the case of either hardware or software modifications or upgrades, the labor associated with the application of the modification.” This revision also further defines software depot-level maintenance as, “The repair, adaptive modifications or upgrades, change events made to operational software, integration and testing.”*

Interpretation/Guidance: The scope of this statute, as indicated by the title, is limited to depot-level maintenance and repair. Therefore, the language does not apply to hardware or software modifications that are not maintenance in nature. Specifically, modifications designed to enhance performance or add functional capability are not considered maintenance and may be excluded in the application of all depot maintenance statutory provisions, however, they may be included if the modifications are being executed consistent with past depot practices.

Language: *Removed the exclusion for the refueling of nuclear aircraft carriers. In a separate amendment to 10 U.S.C. § 2464 Core depot-level maintenance and repair capabilities, a waiver provision was created for these events.*

Interpretation/Guidance: The elimination of this exclusion could disrupt longstanding practice within the Navy to balance its workload across both public and private sectors in the most optimal way to generate the strongest possible “national” industrial base and execute workload in the most efficient manner practical. It is recognized that conducting maintenance and repair as an integral part of a nuclear carrier refueling event is in the best interest of the Department from an economic perspective and the cost to establish public sector capability for either the refueling requirement alone or the combined activity of refueling and maintenance and repair would be excessive. Further, establishing additional public sector capability to execute the nuclear carrier refueling mission, as well as the companion maintenance and repair activity, could alter the balance between public and private sector capabilities. This could also damage the longstanding, effective, and stable private sector capability, thereby damaging the industrial base and, in turn, threaten our ability to conduct essential maintenance in support of national security objectives.

The Navy should establish formal procedures to waive the requirements of 10 U.S.C. § 2464 and request a waiver under the provisions of 10 U.S.C. § 2466 specific to nuclear aircraft carrier refueling and maintenance and repair activity performed in conjunction with nuclear refueling consistent with the implications stated above.

NOTE: The Department’s position is that the above implementation guidance and use of appropriate waivers enables depot maintenance activities to remain consistent with past practices.

10 U.S.C. § 2464 - Core depot-level maintenance and repair capabilities

Language: *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.*

Interpretation/Guidance: The NDAA changed the title of 10 U.S.C. § 2464 from “Core Logistics Capabilities” to “Core Depot-Level Maintenance and Repair Capabilities” thereby narrowing the focus of the statute, but included the phrase “associated logistics capabilities” in the language itself. Given the scope of this statute is limited to Depot-Level Maintenance and Repair, as reflected in its title, “associated logistics capabilities” are interpreted to be limited to capabilities in “direct” support of depot maintenance and repair activities only.

Relative to establishing capability no later than 4 years after initial operational capability (IOC+4) or fielding in support of operations, if the program has an official IOC, core depot maintenance capability should be established consistent with the IOC+4 requirement. If a program does not have an officially scheduled IOC, the associated weapon system is considered “fielded” at the time when, as part of combined or individual operation, it provides a warfighting capability unless a waiver under 10 U.S.C. § 2464(b)(1)(A) has been granted based on a determination that the system at issue is not an enduring part of the national defense strategy. Core depot maintenance capability should be established within four years of “fielding.” Waiver authority under this statute is delegated to the Service Secretaries and may be invoked if they determine that subject systems are not to be enduring elements of the national defense strategy. This authority could be executed using blanket waivers as appropriate.

Language: *Eliminates the exclusion for special access programs, yet creates a provision for a Service Secretary waiver.*

Interpretation/Guidance: The Services should assess their special access programs (SAP) and establish formal procedures to waive application of 10 U.S.C. § 2464 where the Services deem appropriate.

NOTE: The Department’s position is that the above implementation guidance and use of appropriate waivers enables depot maintenance activities to remain consistent with past practices.

10 U.S.C. § 2366a - Major defense acquisition programs: certification required before Milestone A approval

Language: Milestone Decision Authority must certify that a determination of applicability of core depot-level maintenance and repair capabilities requirements has been made before a Major Defense Acquisition Program (MDAP) may receive Milestone A approval.

Interpretation/Guidance: The scope of this analysis is limited to the determination whether the criteria detailed in 10 U.S.C. § 2464 apply to the weapon system or item of military equipment being procured. This analysis should be limited to determining whether the entire system, or particular subsets of the system, is considered to require core depot maintenance capability.