



# *It's The Law*



## **Maintenance – Related Statutes**

- **The Intent**
- **The Law**
- **The Future**

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# Outline



- 
- **The General Intent**
  - **Definition of Depot Maintenance**
  - **Core Logistics**
  - **The 50 Percent Limitation on Contracting for Depot Maintenance**
  - **Public-Private Partnering & Sales of Services**
  - **Minimal Capital Investment**
  - **The \$3 Million Rule**
  - **Prohibition on Management by End Strength**
  - **The Future**



# The Current Intent

## 10 USC Chapter 146



- 
- **Provide an efficient, 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 (2460, 2464)**
  - **Government depots remain viable through reinvestment in depot infrastructure, equipment, and process improvement in direct support of depot operations (Partnering statutes, 2476)**
  - **The remaining statutes.....enable these two intentions**



# Definition of Depot-Level Maintenance & Repair

## 10 USC 2460

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- **Materiel maintenance or repair requiring overhaul, upgrading or rebuilding of parts, assemblies, or subassemblies**
- **Includes**
  - **Testing & reclamation**
  - **Software maintenance**
  - **Interim contractor support, contractor logistics support, & similar contractor support (if considered a depot service)**
- **Regardless of the source of funds**
- **Regardless of the location performed**



# Definition of Depot-Level Maintenance and Repair 10 USC 2460(cont)

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## ➤ Exceptions

- Procurement of major modifications or upgrades designed to improve performance
- Nuclear refueling of an aircraft carrier
- Procurement of parts for safety modification
  - However, does include installation of safety modifications



# Definition of Depot Maintenance & What's Included in 50/50?



	<u>Procurement of Parts</u>	<u>Installation</u>
Maintenance & Repair	Yes (Law and Practice)	Yes (Law and Practice)
Safety Mods	No (By Law)	Yes (By Law & Practice)
	No (By Practice)	
Major Mods & Upgrades Designed to Improve Performance	No (By Law)	No (By Law)
	No (By Practice)	Yes (By Practice)

By Law (10 USC 2460/2466)
By Practice (DoD 50-50 Processes)

The  
Issue



# Current Issues FY 2010 NDAA Conference Report

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- **SEC. 323. Policy Regarding Installation Of Major Modifications And Upgrades (10 USC 2460)**
- **It is the Sense of Congress that no changes should be made to—**
  - (1) the policy of the Department of Defense that in the annual allocation of depot-level maintenance and repair required under section 2466 of title 10, United States Code, the installation of major modifications and upgrades are considered to be part of the definition of depot-level maintenance; and
  - (2) the interpretation and application of that policy as of the date of the enactment of this Act.



# Core Logistics Capabilities

## 10 USC 2464



- **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**
- **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**



# Core Logistics Capabilities 10 USC 2464(cont)



- **The Secretary of Defense shall identify the core logistics capabilities described ... and the workload required to maintain those capabilities**
- **The Secretary of Defense shall require the performance of core logistics workloads necessary to maintain the core logistics capabilities identified**
  - **at Government-owned, Government-operated facilities of the DoD (including Government-owned, Government-operated facilities of a military department)**
  - **and shall assign such facilities sufficient workload to ensure cost efficiency and technical competence**



# Core Logistics Capabilities

## 10 USC 2464(cont)



- **When: Capability must be established within four years of initial operating capability**
- **Core Exceptions-**
  - **Special Access Programs**
  - **Nuclear Aircraft Carriers**
  - **Commercial Items (justified and reported to Congress)**
- **Workloads needed to meet core capabilities not subject to OMB Circular A-76**
  - **SecDef waiver only in the case when workload is no longer required for national defense reasons**

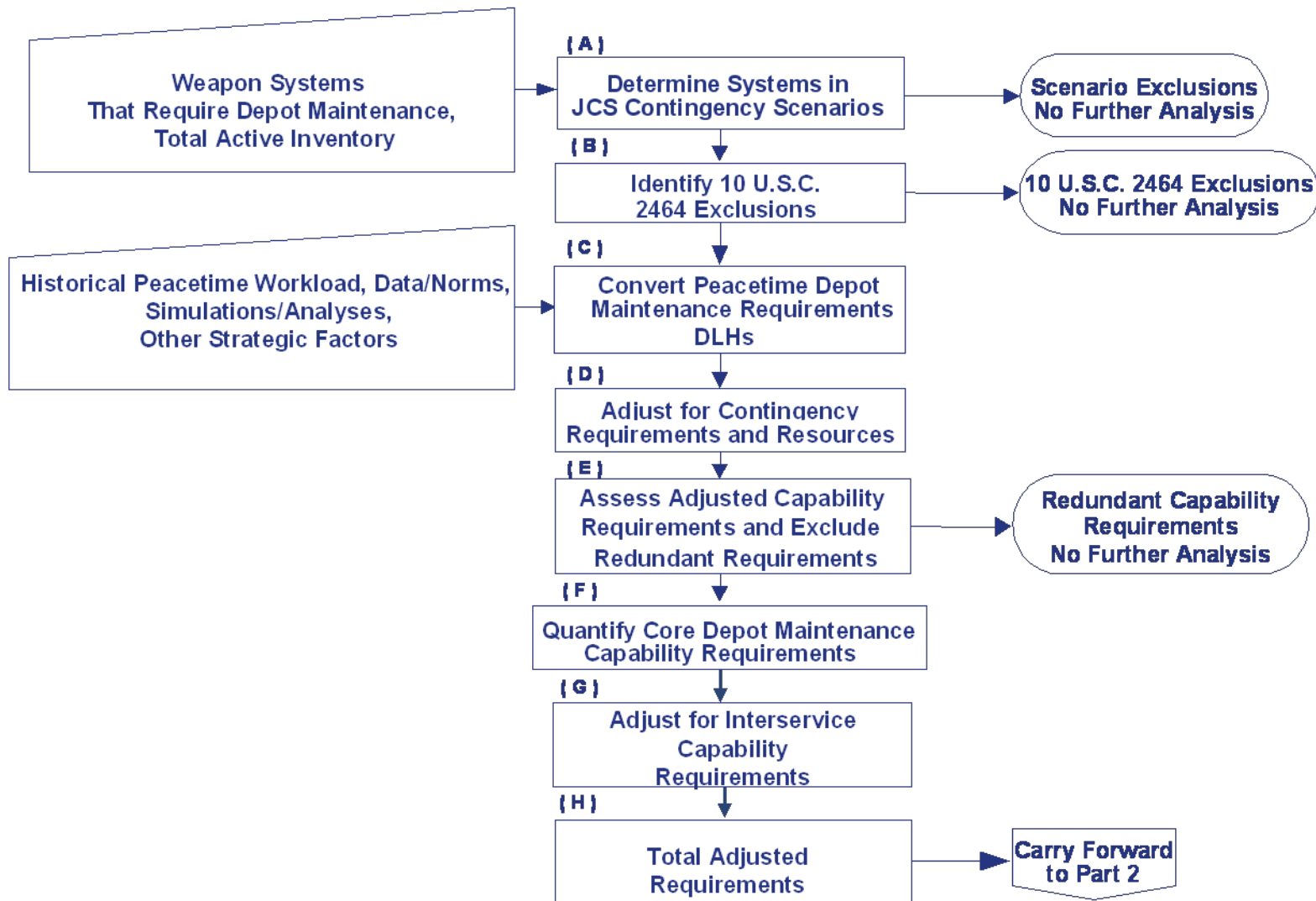


# Core Determination Process



## DoDI 4151.20

### Part 1- Requirements Determination



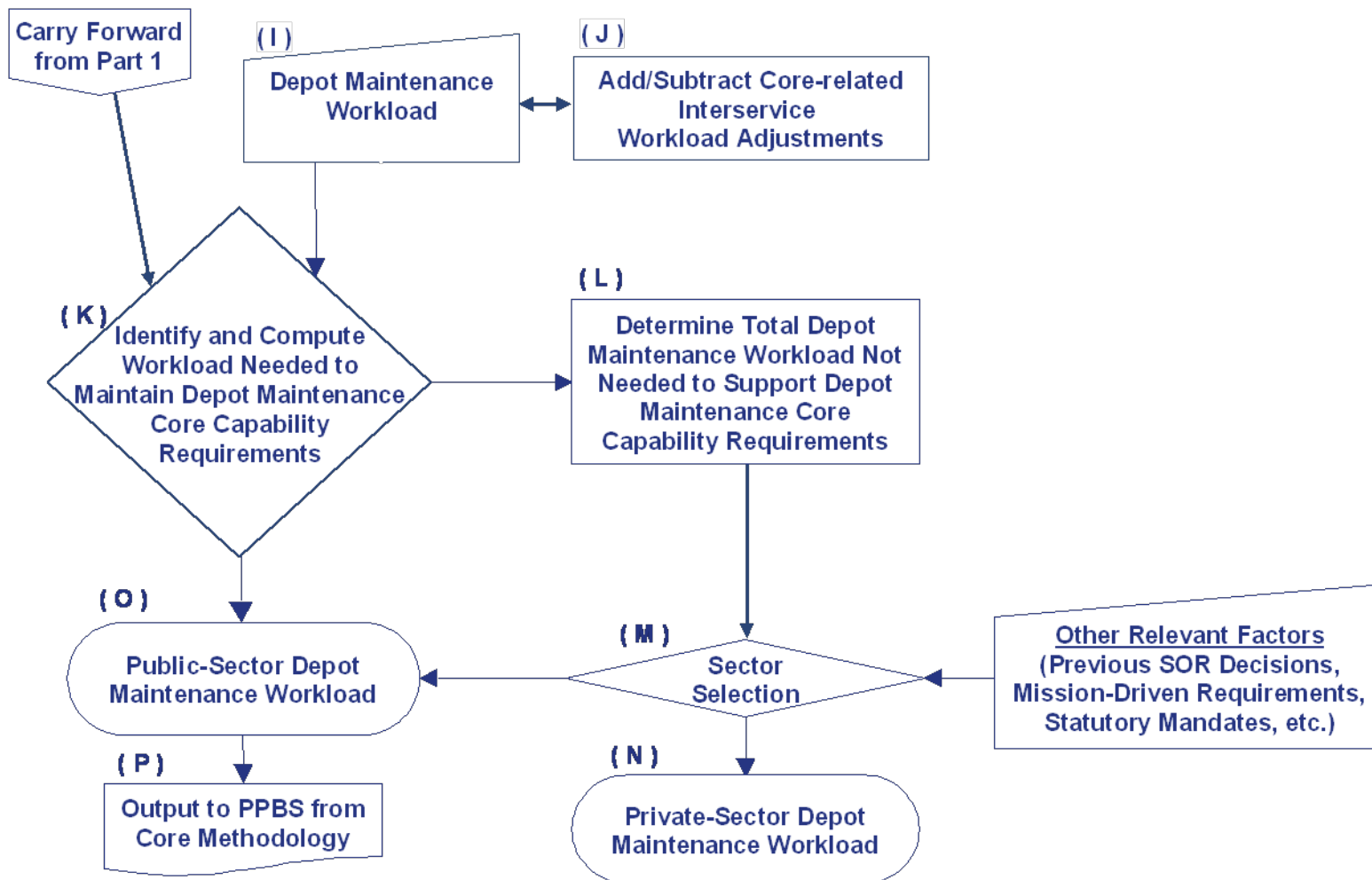


# Core Determination Process



DoDI 4151.20

## Part 2- Core Sustaining Workloads





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# Rules of the Road for 50-50 Accounting



# Limitations on the Performance of Depot Level Maintenance of Materiel 10 USC 2466 (50-50)

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- **Establishes the 50 percent limit on contracting for depot maintenance for each military department and Defense Agency**
  - **Funds not used for contract shall be used for the performance of workload by employees of the DoD**
- **Allows Secretary of Defense waiver based on reasons of national security (may not be delegated)**



# Provisions of Law



- **Two governing statutes**
  - **10 USC 2466, Limitation on the performance of depot-level maintenance of materiel**
    - **Establishes the 50 percent limit on contracting for depot maintenance by a MILDEP or Defense Agency**
    - **Requires annual reporting to the Congress**
    - **Allows waiver by SECDEF based on reasons of national security (may not be delegated)**
  - **10 USC 2460, Definition of depot-level maintenance and repair**
    - **Defines what is included and what is excluded**



# Who Accounts?



- 
- **“... funds made available in a fiscal year to a military department or Defense Agency ...”**
  - **The military department, Defense Agency or other activity that gets the original appropriation from Congress is accountable for the limit and responsible for reporting**
  - **Interservice work is reported by the Principal, not the Service performing or contracting for the work**



# Is It Contract or Organic?



- 
- **“... for the performance by non-Federal Government personnel ...”**
  - **“... for the performance of depot-level maintenance and repair workload by employees of the Department of Defense”**
  - **Who takes credit for the maintenance action(contract CLIN or gov’t production system) determines**
    - **how the work order or contract will be accounted**
    - **how all the other factors of production will be accounted, either public or private**



# What Appropriations?



- 
- **“... regardless of the sources of funds for maintenance or repair ...”**
  - **All appropriations are included, not just designated depot maintenance O&M accounts**
  - **It is the nature of the work as defined by 10 USC 2460, not the appropriation type, that governs**



# What Locations?



- **“ ... regardless of ... the location at which the maintenance or repair is performed”**
- **Work performed at non-depot locations is counted, depending on the nature of the work**
- **How the maintenance action is coded guides if it is to be included**
- **If it meets the 10 USC 2460 definition, count it**
- **Generally, all work performed in a depot is counted, as overflow from lower levels of maintenance is an inherent depot mission**



## What Is Included?

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- **All factors of production are aggregated to include: labor, material, parts, indirect & overhead**
- **Software maintenance**
- **ICS, CLS, and similar contractor support (e.g., TSPR, PBL, flexible sustainment) to the extent that it is for performance of depot-level maintenance and repair**
- **Installation of modifications & upgrades, when a depot-level service**



# What Is Excluded?

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- **Procurement of modifications & upgrades**
- **Nuclear refueling of aircraft carriers**
- **Remanufacturing wherein hulls, chassis, airframes and other major assemblies are utilized in new production**
  - **However, disassembly, reclamation, preparation, recovery, restoration and other depot maintenance actions accomplished prior to remanufacturing are included**



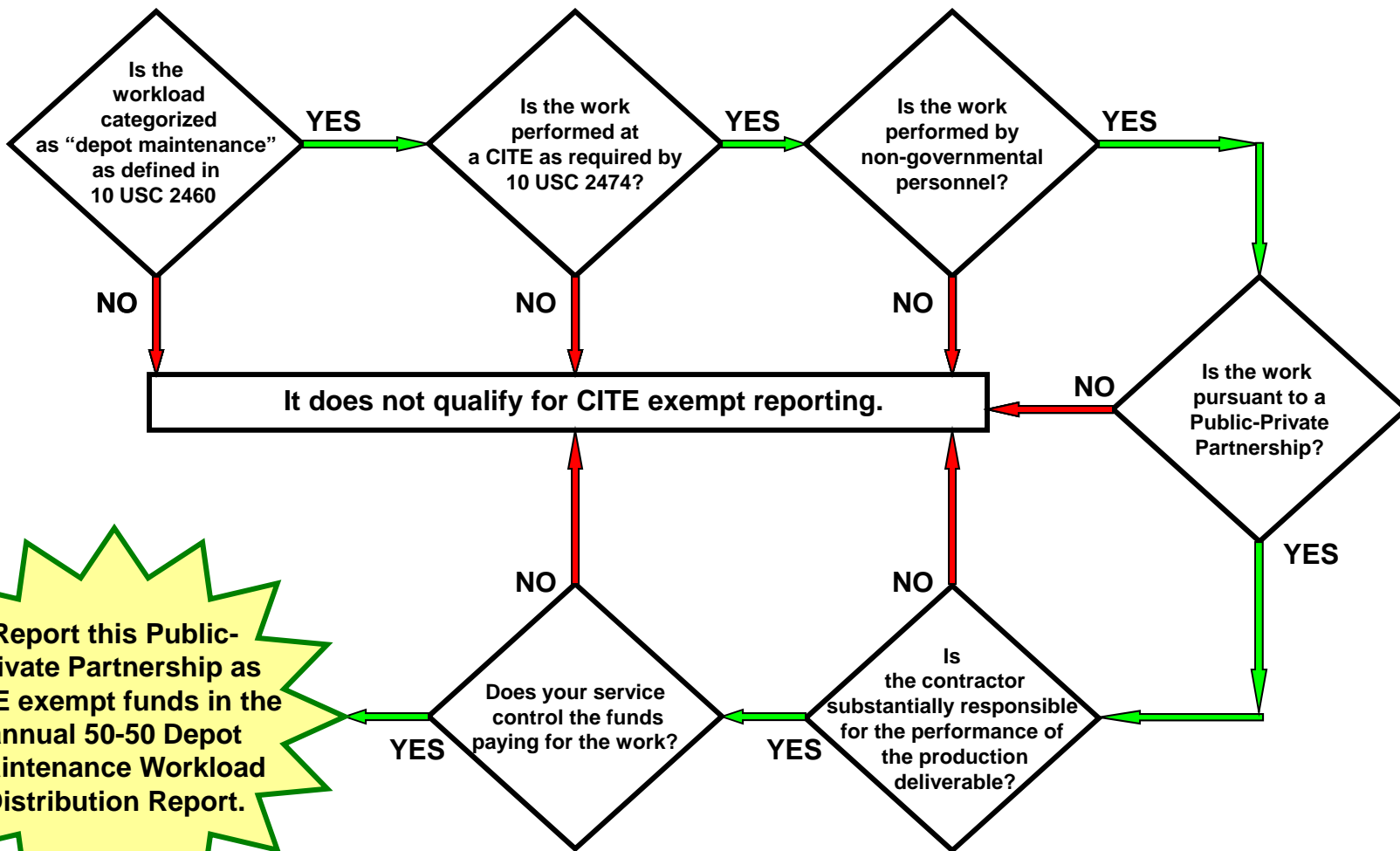
# Is There an Exception to 50-50 for Partnering?



- **10 USC 2474 has been amended creating an exemption to the 50 percent limitation in 10 USC 2466(a) on contracting for depot maintenance**
  - **Work performed at a CITE by a contractor pursuant to a partnership with funds made available for depot maintenance is not counted for purposes of applying the 50 percent limitation**
  - **Each exception shall include amount and nature as a separate item in the 50-50 report**



# Decision Matrix for 50-50 Reporting Exemption for Non-Governmental Labor Performed in a Public-Private Partnership at a CITE Activity





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# Public-Private Partnering & Sales of Services



# Partnering Provisions (and other Sales & Leasing)

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- **10 USC 2474: CITE & Partnering**
- **10 USC 2563: Sales of Articles & Services**
- **10 USC 2208(j): Sales of Mfg, Re-mfg & Eng Services**
- **10 USC 4543: Sales of Mfg Articles & Services by Army Arsenal**
- **Other Sales Authorities**
- **10 USC 2667: Leasing of Non-Excess Real or Personal Property**
- **Federal Acquisition Regulation (FAR)**



# CITE & Partnerships

## 10 USC 2474



- **Service Secretaries required to designate Centers of Industrial & Technical Excellence (CITE)**
- **Head of CITE authority to enter into partnerships**
  - **Employees of Center, private industry, & others to perform work related to core competencies**
  - **Private industry & others to use facilities or equipment of the Center that are not fully utilized**
- **Private sector use of excess capacity**
  - **Facilities or equipment may be used by private industry to perform maintenance or produce goods**
  - **Formerly in 10 USC 2471 (now repealed)**



# CITE & Partnerships

## 10 USC 2474: (cont)



- **Crediting Amounts**
  - **Credited to the appropriation or working capital fund**
  - **Consideration in the form of rental payments or other forms may be accepted for use of property**
- **Private sector use of excess equipment**
  - **No adverse impact on readiness**
  - **Must reimburse direct & indirect costs**
  - **Hold harmless provisions of 10 USC 2563 or in case of war or national emergency**



# CITE & Partnerships

## 10 USC 2474: (cont)



- 
- **Exemption from 50-50 limit (10 USC 2466)**
    - **Depot must be designated a CITE**
    - **Work must be performed on the depot by industry personnel**
    - **Work must be pursuant to a partnership**
    - **Each exception shall include amount and nature as a separate item in the 50-50 report**



# Current Issues FY 2010 NDAA Conference Report

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- **SEC. 329. MODIFICATION OF DATE FOR SUBMITTAL TO CONGRESS OF ANNUAL REPORT ON FUNDING FOR PUBLIC AND PRIVATE**
- **PERFORMANCE OF DEPOT-LEVEL MAINTENANCE AND REPAIR WORKLOADS.**
  - Section 2466(d)(1) of title 10, United States Code, is amended by striking “April 1 of each year” and inserting “90 days after the date on which the budget of the President for a fiscal year is submitted to Congress pursuant to section 1105 of title 31”.



# Sales of Articles & Services

## 10 USC 2563



- **Sale of articles & services by working capital fund industrial facilities not commercially available**
  - **Army 10 USC 4543 sales excluded**
- **Conditions**
  - **Hold harmless except willful misconduct, gross negligence, quality, schedule, or cost**
  - **Only incidental subcontracting**
  - **In the public interest**
  - **Not interfere with the military mission of the industrial facility involved**
  - **Not interfere with the work performed for the Department of Defense**



# Sales of Articles & Services

## 10 USC 2563



- **Methods of sales**
  - **Advanced incremental funding allowable**
  - **Full cost, either reimbursable or fixed price**
- **Proceeds to fund, including working capital fund**
- **Not commercially available = unavailable in required**
  - **Quantity,**
  - **Quality, or**
  - **Time**



# Sales of Mfg, Re-mfg & Eng Services 10 USC 2208(j)

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- **Sale of manufacturing, remanufacturing & engineering services by working capital fund industrial facility**
  - **Fulfilling DoD contract or subcontract & solicitation is open to public-private competition, or**
  - **Advances objectives of 10 USC 2474 (sustain core capabilities)**



# Sales of Mfg Articles & Services by Army Arsenals 10 USC 4543

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- **Working capital funded Army facilities that manufacture cannons, gun mounts, recoil mechanisms, ammo, munitions or components to sell manufactured articles and services**
- **Conditions**
  - **US manufacturer**
  - **Services must be performed in US**
  - **Not commercially available**
  - **Not interfere with the military mission of the industrial facility involved**
  - **Not interfere with the work performed for the Department of Defense**



# Sales of Mfg Articles & Services by Army Arsenals 10 USC 4543(cont)

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- **Conditions (continued)**
  - **Hold harmless except for willful misconduct or gross negligence**
  - **Only incidental subcontracting**
  - **In the public interest**



# Arsenal Support Program Initiative (Public Law 106-398)



- **Objective: Maintain Viability of Army Manufacturing Arsenals**
  - Sustain manufacturing arsenals' unique capabilities
  - Industrial business cost efficiencies
- **Characteristics:**
  - Facility operating costs allocation across business centers
  - Generate revenues to lower operating and maintenance costs
  - Army arsenals are designated as Centers of Industrial and Technical Excellence
  - Offset environmental restoration outlays
- **History:**
  - FY01: Congress authorized at the 3 manufacturing arsenals: Pine Bluff, Rock Island, and Watervliet
  - FY02-FY09: Congress appropriated \$72.53 M
  - FY 06 funding began earmarked to Rock Island & Watervliet Arsenals
  - Law extended until FY10



# Arsenal Support Program Initiative (Public Law 106-398)

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## ➤ Benefits:

- Reduce product and ownership cost needed to offset cost of replenishment, mobilization, and readiness.
- Maintain a warm base for surge capability.
- FY 01 – FY08 local area enhance economic impact of \$325M.
- Improvements to the Army facilities.
- Retain organic capability and skill set at a reduced cost.
- At WVA, Hartchrom Inc. operates the Gun Tube Plating Facility
- Building Renovations on RIA for a Partnership with BAE to produce composite armor solution by 2<sup>nd</sup> quarter of FY 2010.



# Arsenal Support Program Initiative (Public Law 106-398) 11 Purposes



- Provide for the utilization of the existing skilled workforce at the Army manufacturing arsenals by commercial firms.
- Provide for reemployment and retraining of skilled workers who, as a result of declining workload and reduced Army spending on arsenal production requirements at Army arsenals, are idled or underemployed.
- Encourage commercial firms, to the maximum extent practicable, to use Army arsenals for commercial purposes.
- Increase opportunities for small businesses to use Army arsenals for those purposes.
- Maintain in the US a work force having the skills in manufacturing processes that are necessary to meet industrial emergency planned requirements for national security purposes.
- Demonstrate innovative business practices, support DoD acquisition reform, and serve as both a model and a laboratory for future defense conversion initiatives of the DoD.
- To the maximum extent practicable, allow the operation of Army arsenals to be rapidly responsive to the forces of free market competition.
- Reduce or eliminate the cost of Government ownership of Army arsenals, including the costs of operations and maintenance, environmental remediation, and other costs.
- Reduce the cost of products of the DoD produced at Army arsenals.
- Leverage private investment at Army arsenals through long-term facility use contracts, property management contracts, leases, or other agreements that support & advance the demonstration program for the following activities: "(A) Recapitalization of plant and equipment. "(B) Environmental remediation. "(C) Promotion of commercial business ventures. "(D) Other activities approved by the Secretary of the Army.
- Foster cooperation between the Army, property managers, commercial interests, State, and local agencies in the implementation of sustainable development strategies and investment in Army arsenals.



# Arsenal Support Program Initiative (Public Law 106-398)



- **Objective: Maintain Viability of Army Manufacturing Arsenals**
  - **Sustain Manufacturing Arsenals Unique Capabilities**
  - **FY01: Congress Authorized at the 3 manufacturing Arsenals, Pine Bluff, Rock Island and Watervliet Arsenal**
  - **FY 02 Appropriated \$3.24M**
  - **FY 03 Appropriated \$4.2M**
  - **FY 04 Appropriated \$3.45M**
  - **FY 05 Appropriated \$10.93M**
  - **FY 06 Funding began earmarked to Rock Island & Watervliet Arsenals**
  - **FY 06 Appropriated \$8.5M**
  - **FY 07 Appropriated \$8.85M**
  - **FY 08 Appropriated \$21.1M**
  - **FY 09 Appropriated \$12.46M**
  - **Law extended until FY10**



# Other Sales Authorities



- **10 USC 2539b – Services for testing of materials, equipment, models, computer software and other items**
- **10 USC 7300 – Naval shipyard sales of articles or services to private shipyards for fulfillment of contracts for nuclear ships**
- **22 USC 2754 – Sales or lease of articles or services to friendly countries under certain conditions**
- **22 USC 2770 – Sales of articles and services to US companies for incorporation in end items to be sold to a friendly country or international organization under certain conditions**



# Leasing of Non Excess Real or Personal Property

## 10 USC 2667

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- **Lease of non-excess real or personal property**
  - **Secretary determination if for more than 5 years**
  - **Payment not less than fair market value, but payment can be in kind**
    - **Maintenance, protection, alteration, repair, improvement (including environmental)**
    - **Construction of new facilities**
    - **Provision of facilities**
    - **Facility operation**
    - **Provision of other services**



# Leasing of Non Excess Real or Personal Property 10 USC 2667 (cont)

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- **Payments for utilities and services furnished credited to appropriation or working capital fund furnishing utilities or services**
- **Other payments to special account used for maintenance, protection, alteration, repair construction, restoration, construction, leases or support operations of Service**
  - **At least 50 percent of proceeds to same military installation**
- **Personal property only leases of more than \$100K per year must be competitively awarded**



# Partnering Authority Conclusions



- **Many authorities with differing conditions and restrictions**
- **Parties tend to use those provisions they are most familiar with as long as they can achieve their objective**
- **The provisions of 10 USC 2474 are by far the broadest and most flexible**
  - **All Services have designated their maintenance depots as CITEs**



# Minimum Capital Investment for Certain Depots (10 USC 2476)



- **Each fiscal year, Military Departments shall invest six percent of the average total combined workload funded at all the depots of that military department**
  - **Average is based on the preceding three fiscal years**
- **Capital Budget includes investment funds spent on depot infrastructure, equipment, and process improvement in direct support of depot operations**
- **Applies to all major depots**
  - **Arsenals added in FY-09 NDAA**
- **SECDEF may waive the requirement for national security reasons**
  - **Must notify Congress of the reasons and the plan of action**
- **SECDEF shall submit a report containing budget justification documents summarizing the level of capital investment for each military department not later than 45 days after the date on which the President submits the budget**
- **Report Must Include:**
  - **A specification of any statutory, regulatory, or operational impediments to achieving the requirement**
  - **A description of the benchmarks for capital investment established for each covered depot and military department and the relationship of the benchmarks to applicable performance measurement methods used in the private sector**



# Requirement for Competition “The \$3 Million Rule” 10 USC 2469

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- **Cannot change location of performance for workloads at DoD depots valued at \$3M or greater (including labor & materials) unless-**
  - **Merit based selection procedures for competitions among DoD depots**
  - **Competitive procedures for competition among public and private sector entities**
- **OMB Circular A-76 does not apply**
- **Waiver for work performed on a CITE for 10 USC 2474 partnership. (PL 108-136, sec 333)**



# Prohibition on Management by End Strength 10 USC 2472

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- **Civilian employees of the DoD who perform depot-level maintenance & repair workloads**
  - **May not be managed on any constraint or limitation in terms of-**
    - **Man Years**
    - **End Strength**
    - **Full Time Equivalent Positions**
    - **Maximum Number of Employees**
- **Shall be managed solely on the basis of available workload and funds made available**



# Issues & The Future

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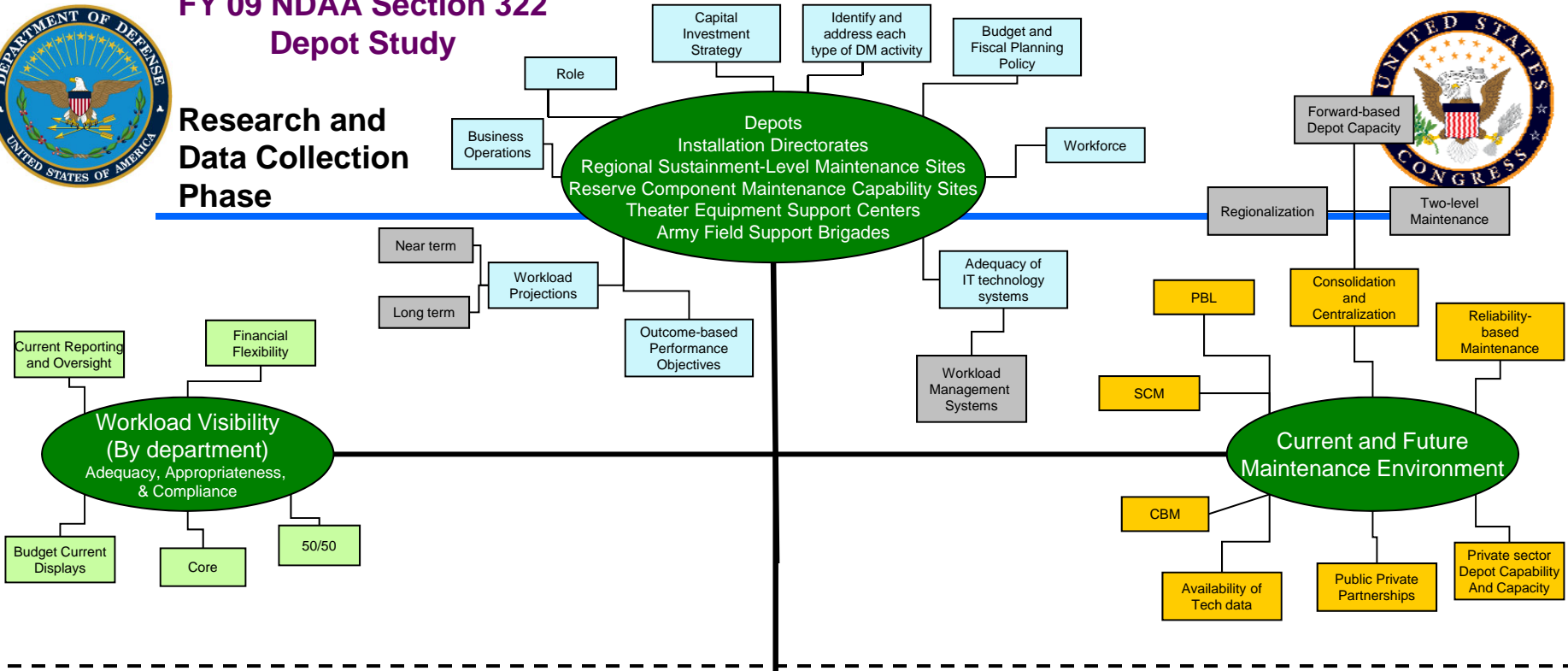


- **Depot Maintenance Definition (Software)?**
- **Distribution of Depot Maintenance Workloads(50-50)?**
- **Partnering/CITE Designations?**
- **Core(Facilities/Equipment/Personnel)?**
- **Tech Data?**
- **Arsenals/Ammo Plants?**

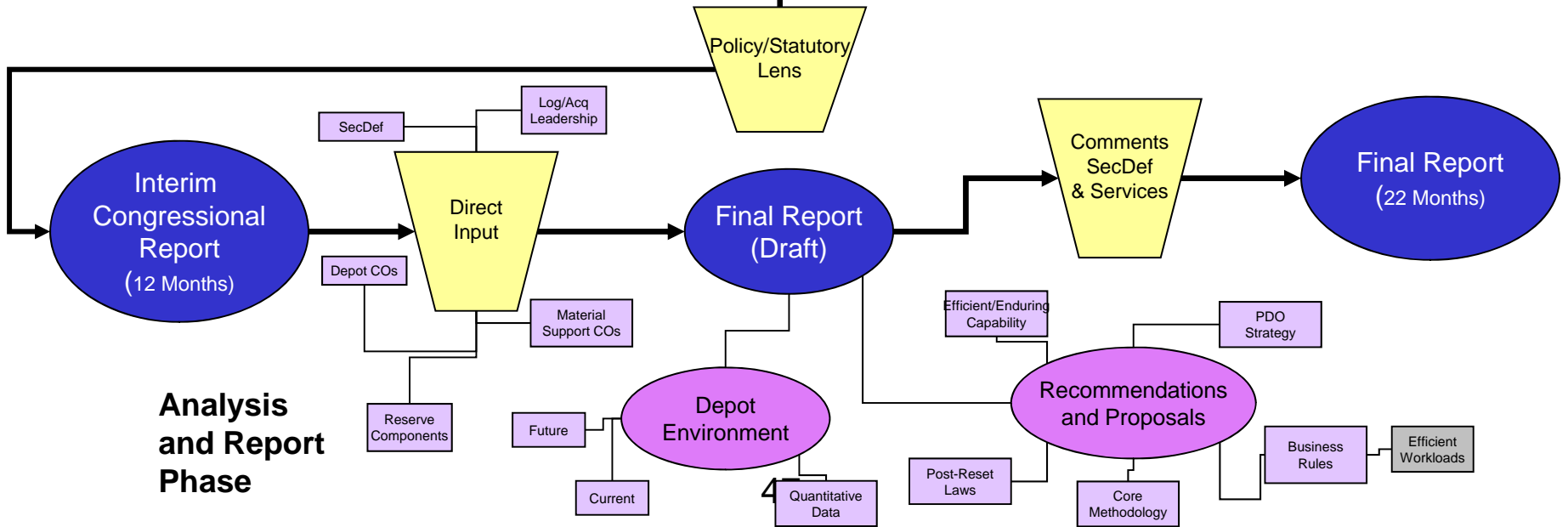


# FY 09 NDA Section 322 Depot Study

## Research and Data Collection Phase



## Analysis and Report Phase





# Web Resources

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**For Additional Information Regarding Maintenance Policy Subjects:**

***<http://www.acq.osd.mil/log/mppr/index.htm>***

**For Additional Training on Maintenance Policy Subjects:**

***<https://learn.test.dau.mil/html/clc/Clc.jsp?cl=>***