
Legislative Changes to the Excess Defense Articles Program

[The following is a reprint of SECDEF WASHINGTON DC//USDP: DSAA message, 191247Z August 1996, subject as above.]

REF: MSG DTG 231838Z July 1996, SUBJ: Security Assistance Legislation

1. **Summary.** On 21 July 1996, the President signed into law P.L. 104-164, making major changes to security assistance authorities. Referenced message provides a complete summary of the new law's provisions as they concern military assistance and sales programs. This message specifically addresses the changes the new legislation makes to the EDA Program (Paras. 2-7) and provides guidance to the military services about these new changes (Para. 8). End Summary.

2. **Repeal of certain EDA authorities.** Legislation repeals Sections 517, 518, 519 and 520 of the FAA in order to consolidate all grant authorities in an amended Section 516.

3. **Grant EDA eligibility.** P.L. 104-164 amends Section 516 to authorize the President to transfer EDA (without regard to lethality) on a grant basis to any country justified for such assistance in the CPD, the 634 Report, or separately. A list of eligible countries was sent to congress on 1 August 1996. This list will be provided in separate telegram.

4. **Limitations for transfers under Section 516.**

- A) P.L. 104-164 amends Section 516 to permit a grant transfer only if it is preferable to a transfer on a sales basis, after taking into account the potential proceeds from, and likelihood of, such sales and the comparative foreign policy benefits that may accrue to the United States as the result of a transfer on either a grant or sales basis. This is a provision of the former Section 519 non-lethal EDA transfer authority.
- B) P.L. 104-164 amends Section 516 to permit a transfer only if the President determines that the transfer of the EDA articles on a grant or sales basis will not adversely impact the national technology and industrial base or reduce the opportunity of entities to sell new or used equipment to the country. Previous legislation only required the President to "consider" the effects, not make a determination. The authority to make the presidential determination has been delegated to the Director, DSAA.
- C) P.L. 104-164 amends Section 516 to give priority regarding delivery of EDA to NATO and major Non-NATO allies along NATO's southern and southeastern flanks (i.e., Portugal, Greece, Turkey, Israel, and Egypt) to the maximum extent feasible over other deliveries of EDA. This amendment makes permanent a long-standing provision of the annual foreign operations appropriations legislation.
- D) P.L. 104-164 amends Section 516 to renew for another four-year period (FY 1997-2000) the current statutory requirement to offer grant EDA to Greece and Turkey in a 7:10 ratio.
- E) Other limitations remain in effect, such as, articles must be drawn from existing stocks of DoD, DoD procurement funds cannot be used, and transfers must not adversely impact U.S. readiness.

5. Congressional notifications for grants and sales of EDA. P.L. 104-164 amends Section 516 to require a 30-day prior Congressional notification of grants and sales of EDA that are Significant Military Equipment (SME) or transfers with an original acquisition value of \$7,000,000 or more. Previously, all grants and sales of EDA, regardless of type and value, had to be notified in advance. . . .

6. No-cost transportation of EDA. P.L. 104-164 amends Section 516 to authorize (permit) no-cost transportation on a space available basis of grant EDA weighing less than 25,000 pounds to developing countries receiving less than \$10M of FMF or IMET assistance in any fiscal year, provided that to do so is determined to be in the national interest of the U.S. Additionally, P.L. 104-164 authorizes (permits) the Department of Defense to expend funds for crating, packing, handling, and transportation of EDA transferred under Section 516 in FY 1996 and 1997 to countries eligible to participate in the Partnership for Peace (PfP) and that are eligible for assistance under the Support for East European Democracy (SEED) Act of 1989.

7. EDA Ceiling. The new legislation immediately repeals Section 31 (D) of the Arms Export Control Act which established a \$250M (in original acquisition value) ceiling on most EDA transfers (grants and sales). The new legislation establishes a new EDA ceiling of \$350M (in current value) for all grant transfers under Section 516 starting in FY 1997.

8. Military Services Requirements. Military services and relevant agencies are still required to forward a detailed listing of EDA items to be transferred, including their original acquisition value and current value, to DSAA/OPS-MGT, citing whether the transfer is a grant or sale. Each transfer should have an accompanying statement as to the purpose for which the items are being provided and whether the same type of items have been previously transferred to the proposed recipient. DSAA will obtain the appropriate OSD, Commerce, and State clearances and make any required Congressional notifications. Once coordination and/or notification is complete, DSAA will send a message informing the relevant MILDEP or agency authorization to offer/transfer the EDA items.

9. DSAA points of contact are: Ms. Karma Job and Ms. Gail Crook, OPS-MGT, DSN 664-6635 or Commercial (703) 604-6635.