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ACTION MEMO

FOR: ASSISTANT SECRETARY OF DEFENSE (GSA)

FROM: VADM Jeffrey A. Wieringa, Director, Defense Security Cooperation Agency

SUBJECT: Presidential Certification of Compliance with Section 1228 of the National Defense Authorization Act for Fiscal Year 2008 (FY08 NDAA)

- The FY08 NDAA, P.L. 110-181, Section 1228, requires that no defense articles may be provided to the Government of Iraq or any other group, organization, citizen, or resident of Iraq until the President certifies to the specified congressional committees that a registration and monitoring system has been established
- On July 25, 2008, the President, as authorized by Section 1228, delayed the effective date for compliance with Section 1228 to October 23, 2008 by written certification addressed to specified congressional committees. The basis for the delay was to ensure a thorough review of all transfer authorities for Iraq and to develop solutions to ensure compliance with Section 1228.
- The President must certify to specified congressional committees by October 23, 2008, that such a system is in place; otherwise, all exports and transfers to Iraq are required to end.
- Since July 25, 2008, DoD and the Department of State (DoS) have reviewed all authorities under which defense articles are exported and transferred to Iraq and have taken the necessary measures to comply with Section 1228. As a result of this review, DSCA has taken the following actions:
  - Drafted a directive-type memorandum (DTM) for approval by the Deputy Secretary of Defense requiring all DoD components involved in exports or transfers of defense articles to Iraq to comply with Section 1228. DSCA expects implementation of this DTM by September 30, 2008.
  - Verified that currently all exports and transfers of defense articles to Iraq are being conducted under one of five transfer authorities: (1) the Iraq Security Forces Fund (ISFF) (P.L. 110-161), (2) the Foreign Military Sales (FMS) program, (3) the Secretary of Defense's authority to Support Military

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Operations to Combat Terrorism (Section 1208 of P.L. 108-375, as amended in the FY08 NDAA), (4) the Foreign Excess Personal Property (FEPP) program managed by the DUSD for Logistics and Materiel Readiness, and (5) through exports authorized as Direct Commercial Sales (DCS) (Arms Export Control Act (AECA) (22 U.S.C. 2751, et. seq.)).

- Ensured that DoS, DSCA, USCENTCOM (MNSTC-I & SOCCENT), and the DUSD(L&MR) have established procedures to comply with the registration and monitoring system required by Section 1228.

- DSCA has verified that all organizations transferring or authorizing the export of defense articles to Iraq have appropriate measures that comply with Section 1228. DSCA has assembled documentation from each process owner outlining the procedures for registering the serial numbers of small arms, monitoring lethal defense articles, and documenting the origin, shipping, and distribution of all such lethal defense articles transferred to Iraq under the ISFF or any other security assistance program. The DoS has also independently verified the compliance of its Direct Commercial Sales program. Information regarding compliance procedures, a draft DTM, and copies of the President's July 25, 2008, letters authorizing a 90-day delay for compliance with Section 1228 is at Tab 2.

- Therefore, the recommended course of action is to request the President to certify compliance with Section 1228 by signing the attached letters addressed to specified congressional committees before October 23, 2008 (Tab B).

- Additionally, it is recommended that the President delegate future implementation of Section 1228 to the Secretary of Defense and the Secretary of State. In Conference Report 110-477 (December 6, 2007 pages 1019 – 1020), Congress expressly envisioned that delegation would take place. It is also recommended that the President allow re-delegation to a level no lower than the Assistant Secretary level in the Departments of Defense and State. Administration and oversight authority and responsibility at this level will allow DoD and DoS to administer the system and conduct consultations with Congress concerning implementation of Section 1228 more efficiently, and thus ensure continued timely and uninterrupted support to Iraq.

- Therefore, it is recommended that the President sign a delegation memorandum in the form attached for this purpose (Tab C).

**RECOMMENDATION:** That you approve and sign the memorandum at Tab 1.

Approve: \_\_\_\_\_ Disapprove: \_\_\_\_\_ Other: \_\_\_\_\_

**COORDINATION: TAB D**

**Attachments:**

- Tab 1**      **Action Memorandum from GSA to SecDef**
- Tab A**      **Memorandum from SecDef to the Assistant to the President for National Security Affairs**
- Tab B**      **Draft Presidential Certification Letters to Congressional Committees**
- Tab C**      **Draft Delegation Memorandum**
- Tab D**      **Coordination Sheet**
- Tab 2**      **Background Information**
  - **Compliance Procedures**
  - **Draft Directive-Type Memorandum (DTM)**
  - **Presidential Certification Letters of July 25, 2008**



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ACTION MEMO

DepSecDef \_\_\_\_\_  
USD(P) \_\_\_\_\_

FOR: SECRETARY OF DEFENSE

SEP 26 2008

FROM: Joseph A. Benkert, Assistant Secretary of Defense (GSA) 

SUBJECT: Presidential Certification of Compliance with Section 1228 of the National Defense Authorization Act for Fiscal Year 2008 (FY08 NDAA)

- Tab A is a proposed memo for your signature that would request the President to certify compliance with Section 1228 of the FY 08 National Defense Authorization Act, P.L. 110-181. The President would make the certification through letters to Congressional leadership at Tab B. The President may also delegate further implementation of Section 1228 to you and the Secretary of State (Tab C).
- Section 1228 requires that no defense articles may be provided to the Government of Iraq or any other group, organization, citizen, or resident of Iraq until the President certifies to the specified congressional committees that a registration and monitoring system has been established (Tab D). The registration and monitoring program must include serial number registration of small arms; an end use monitoring program for lethal defense articles; and records of the origin, shipping, and distribution of defense articles.
- On July 25, 2008, the President, as authorized by Section 1228, delayed the effective date for compliance with Section 1228 to October 23, 2008 by written certification addressed to specified congressional committees. The basis for the delay was to ensure a thorough review of all transfer authorities for Iraq and to develop solutions to ensure compliance with Section 1228.
- The President must certify to specified congressional committees by October 23, 2008, that such a system is in place; otherwise, all exports and transfers to Iraq are required to end.
- DSCA coordinated a DoD and Department of State (DoS) review of all authorities

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under which defense articles are exported and transferred to Iraq, and a verification that organizations have taken the necessary measures to comply with Section 1228. We have verified that exports and transfers of defense articles to Iraq are being conducted under one of five transfer authorities:

- The Iraq Security Forces Fund (ISFF) (P.L. 110-161) managed by the Commander, MNSTC-I, under Commander MNFI and Commander USCENTCOM authority.
  - The Foreign Military Sales (FMS) program, managed by DSCA.
  - The Secretary of Defense's authority to Support Military Operations to Combat Terrorism (Section 1208 of P.L. 108-375, as amended in the FY08 NDAA), managed in Iraq by the Commander SOCCENT.
  - The Foreign Excess Personal Property (FEPP) program, managed by the DUSD for Logistics and Materiel Readiness.
  - Exports authorized as Direct Commercial Sales (DCS) (Arms Export Control Act (AECA) (22 U.S.C. 2751, et. seq.)), under the authority of the DoS.
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- The Deputy Secretary of Defense has signed a directive-type memorandum (DTM) requiring all DoD components involved in export or transfer of defense articles to Iraq to comply with Section 1228 (Tab E).
  - The organizations transferring or authorizing the export of defense articles to Iraq have certified that they have taken appropriate measures that comply with Section 1228. DSCA has received detailed submissions from each transfer authority with information sufficient to support certifying compliance with the requirements of Section 1228. The DoS has also independently verified compliance of its Direct Commercial Sales program. Certification letters from each entity are at Tab F.
  - Therefore, I recommend that you request, by the memo at Tab A, that the President certify compliance with Section 1228 by signing the attached letters addressed to specified congressional committees before October 23, 2008.
  - Additionally, the President may delegate future implementation of Section 1228 to the Secretary of Defense and the Secretary of State. In Conference Report 110-477 (December 6, 2007 pages 1019 – 1020), Congress expressly envisioned that delegation would take place (Tab G). We recommend that the President allow re-delegation to a level no lower than the Assistant Secretary level in the Departments of

Defense and State. Administration and oversight authority and responsibility at this level will allow DoD and DoS to administer the system and conduct consultations with Congress concerning implementation of Section 1228 more efficiently, and thus ensure continued timely and uninterrupted support to Iraq. Therefore, I recommend that the President sign a directive memorandum in the form attached for this purpose (Tab C).

**RECOMMENDATION:** That you approve and sign the memorandum at Tab A, which (1) transmits your request for certification under Section 1228, and (2) requests that the President delegate his authorities and responsibilities under Section 1228 to you and the Secretary of State.

Approve: \_\_\_\_\_ Disapprove: \_\_\_\_\_ Other: \_\_\_\_\_

**COORDINATION: TAB H**

**Attachments:**

Tab A	Memorandum from SecDef to Assistant to the President for National Security Affairs
Tab B	Draft Presidential Certification Letters to Congressional Committees
Tab C	Draft Delegation Memorandum
Tab D	Section 1228 of FY 08 NDAA
Tab E	Directive Type Memo
Tab F	Certification Letters
Tab G	Excerpt from Conference Report 110-477
Tab H	Coordination