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WASHINGTON UPDATE

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NEW MILITARY SURPLUS GUIDELINES TAKE EFFECT ON OCTOBER 1ST

The Pentagon is expected to issue new guidelines affecting local law enforcement access to the Excess Property Program – also known as the 1033 program – that will take effect on October 1, 2015, the beginning of the federal 2016 fiscal year. Under the overall guidelines established by President Obama’s inter-agency Law Enforcement Equipment Working Group, police departments across the country will be required to provide detailed justifications for “controlled” equipment, certify that proper training is in place, and secure the approval of their civilian governing body, in order to be eligible to apply for the 1033 military surplus gear.

These changes are in addition to the list of restrictions imposed this past May through a presidential Executive Order banning the transfer of certain types of surplus military hardware, including tracked vehicles, aircraft, vessels or vehicles with weapon installed on them, firearms larger than .50 caliber and grenade launchers. More than \$5.1 billion in military surplus equipment has been transferred to state, local and tribal law enforcement entities since the 1033 program was first inaugurated in 1997. This highly popular program has come under intense congressional scrutiny since the Missouri Ferguson Police Department militarized its response to the unrest gripping the City following the shooting death of Michael Brown in August 2014. In the wake of increased public concerns over the perceived “militarization” of police forces, Members of Congress from virtually all political affiliations have been demanding more rigorous controls and greater transparency and accountability in the administration of the program.

EPA & ARMY CORPS OF ENGINEERS CLEAN WATER REGS PUT ON HOLD

Late last week, U.S. District Judge Ralph Erickson of North Dakota issued a preliminary ruling blocking the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers’ (ACE) enforcement of new rules expanding Clean Water Act mandates to smaller waterways, tributaries and wetlands. The temporary injunction covers 13 states: Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota and Wyoming. Judge Erickson found that the petitioning states presented a credible case that they would face “irreparable harm” if the Waters of the United States rule was allowed to take effect on August 28 and that they demonstrated to the satisfaction of the court their claim had a “likelihood of success.” Judge Erickson’s decision was widely applauded by Members of Congress representing farm states who have criticized the EPA for engaging in reckless federal overreach.

In response to the Court action, the EPA announced that the new rule would still apply to the 37 states that are not covered by the temporary injunction. According to the EPA, the rule ensures that waters protected under the Clean Water Act are more precisely defined, more predictably determined and easier for businesses and industry to understand. Specifically, the rule defines and protects tributaries that impact the health of downstream waters (rivers, lakes, bays and coastal waters). The rule, moreover, limits protection to ditches that are constructed out of streams or function like streams and can carry pollution downstream -- ditches that are not constructed in streams and that flow only when it rains are not covered. The rule does not protect any new types of waters, regulate most ditches, apply to groundwater, create any new permitting requirements for agriculture, or address land use or private property rights. Nevertheless, twenty-nine states (including the 13 states covered by the injunction) have filed lawsuits against the water rule. Business interests representing energy, farmers, developers are also suing the EPA while Congress is actively pursuing legislative options to overturn the rule.

PRESIDENT OBAMA CLOSE TO SECURING VETO PROOF MARGIN ON IRAN NUCLEAR DEAL

Congress has until September 17 to consider legislation to either approve or oppose the nuclear deal reached by the United States, France, United Kingdom, Germany, China, Russia and the Islamic Republic of Iran. Speaker John Boehner (R-OH) and Senate Majority Leader Mitch McConnell (R-KT), who both oppose the deal, plan to consider, in their respective chambers, a resolution of disapproval in the next two weeks. President Obama currently has the support of 33 senators, just one shy of the number needed to sustain a veto. In the event that 40 senators should come to support the nuclear deal, Minority Leader Harry Reid (D-NV) will be in the position to filibuster the motion of disapproval, thereby preventing the measure from reaching the President's desk and saving the Administration from what could well be an embarrassing foreign policy/national security drubbing.

MACHINATIONS OVER A GOVERNMENT SHUTDOWN BACK ON THE TABLE

Following the release of several videos showing Planned Parenthood officials discussing the sale of fetal body parts for medical research, Senator Ted Cruz (R-TX) is leading the charge to defund the non-profit organization in the FY 2016 federal appropriations cycle. Cruz has called Planned Parenthood a "criminal" entity and has vowed to fight efforts to fund the organization through a short- or long-term continuing resolution, an omnibus appropriations bill or any other appropriations vehicle. According to Cruz, President Obama will bear the full burden of shutting down the government should he veto a funding bill that locks out Planned Parenthood.

Cruz's position is greatly complicating what are already very difficult leadership negotiations to enact a government funding bill before the end of the month. Senate Majority Leader Mitch McConnell (R-KY) has once again declared his assurance that there will be no government shutdown. Speaker John Boehner (R-OH), in an unguarded moment, was recorded last week calling Senator Cruz a "Jack Ass." While there is certainly no love lost between Senator Cruz

and the GOP congressional leadership team, the challenge of enacting a long-term government funding bill goes beyond the issue of Planned Parenthood and extends to a host of other critically contentious items such as whether to waive sequestration cuts for both defense and domestic programs, reauthorization of the Export-Import Bank and raising the national debt ceiling.

Congress reconvenes from its August recess on September 8, leaving just 12 legislative days to enact a funding bill that keeps government agencies open for business beyond September 30th.