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AMCCC-G

POINT PAPER

23 October 1998

SUBJECT: Implementation of the Lautenberg Amendment for AMC Military and Civilians - Update

PURPOSE: To provide information concerning the Lautenberg Amendment and update on recent litigation challenges

FACTS:

- Effective 30 September 1996, the Omnibus Consolidated Appropriations Act of 1997 (Public Law 104-208), amended the Gun Control Act of 1968 with the inclusion of the Lautenberg Amendment (18 USC section 921, 922). It created a new firearms "disability" and made it a felony punishable by up to 10 years in jail for:

- ◆ Any person convicted in any court of a **misdemeanor** crime of domestic violence to ship or transport in interstate or foreign commerce or possess or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce; or

- ◆ Any person to sell or otherwise dispose of a firearm or ammunition to any person knowing or having reasonable cause to believe that such person has been convicted in **any court** of a **misdemeanor** crime of domestic violence.

- ◆ The definition of "domestic violence" includes all misdemeanors that involve a use or attempted use of physical force, or the threatened use of a deadly weapon.

- ◆ The definition excludes convictions that have been expunged, set aside, or pardoned or where civil rights have been restored, and cases where the individual was not represented by counsel or did not knowingly waive counsel.

- The law applies to employees of government agencies, including law enforcement officers and the military, and to both government issued and personal weapons and ammunition.

- DOD, DA and AMC have issued guidance for implementing the Lautenberg Amendment that distinguishes between their application of the Lautenberg Amendment to the military (22 October 1997 and 15 January 1998, respectively) versus civilian employees (21 November 1997 and 27 February 1998, respectively). AMC has also issued separate implementing guidance for its military (30 January 1998) and its civilians (10 April 1998).

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- ◆ DOD's guidance is interim guidance, with final guidance expected within the year as there are open issues to resolve.
- ◆ As a matter of policy, DOD has applied the Lautenberg Amendment outside the United States territory.
- ◆ The Amendment should not be construed to apply to major military weapons systems or "crew served" military weapons and ammunition (tanks, missiles, aircraft, etc.) absent an opinion from the Department of the Treasury to the contrary.
- ◆ Relative to the military, the Services were to take reasonable steps to identify members with qualifying convictions (certification recommended and a DOD form provided).
 - There was also a prohibition on adverse action for soldiers based solely on misdemeanor convictions for acts of domestic violence committed **on or before** 30 September 1996.
- ◆ Relative to the civilians, the Lautenberg Amendment applies to all Army civilians, including nonappropriated fund employees.
 - For civilian employees found to have a qualifying conviction, Commanders should retrieve all Government-issued firearms and ammunition and suspend the authority of those employees to possess, transport in interstate or foreign commerce or receive firearms or ammunition.
 - Commanders should refrain from taking permanent adverse personnel action against an employee based solely on a qualifying misdemeanor conviction for domestic violence. This does not limit the obligation or authority to take adverse personnel action or other appropriate action where, because of the operation of this law, an employee ceases to be qualified to fulfill the duties of his or her position.

UPDATE

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- **The United States Court of Appeals for the District of Columbia Circuit issued a decision adverse to the United States in Fraternal Order of Police (FOP) v. United States, No. 97-5304, 28 August 1998. FOP challenged the constitutionality of the Lautenberg Amendment in that it violated its member police officers due process and equal protection rights.**

◆ **The Court of Appeals held that the Lautenberg Amendment to the Gun Control Act (GCA) violates the Equal Protection Clause and is therefore unconstitutional.** The Court held the Lautenberg Amendment unconstitutional in that it prohibits the possession of firearms in an official capacity by police officers convicted of misdemeanor crimes of domestic violence while it would allow police officers with felony convictions to continue to possess firearms in their official capacities.

◆ **The Court of Appeals did not strike down the entire GCA, only the Lautenberg Amendment.**

◆ On 13 October 1998, the Department of Justice (DOJ) filed a petition for rehearing en banc with the Court of Appeals. The Department of the Treasury and its Bureau of Alcohol, Tobacco, and Firearms (BATF) are the lead federal agencies on Lautenberg matters. There has been no further court action on this matter, to date. The Court's decision is not final until such time as the appeal process has been exhausted.

◆ The BATF issued guidance to Federal agencies that the statute remains in full force and effect. DOD has advised that until further notice, continue to follow the DOD Interim Guidance.

◆ DA's guidance is before initiating an adverse action against an employee who cannot perform the duties of his/her position because of the Lautenberg Amendment, coordination should occur with the MACOM and OTJAG Labor and Employment Division (DAJA-LE). Such actions should be coordinated with AMCCC-G that, in turn, will coordinate with DAJA-LE.

◆ DOD is staffing its final policy which will be impacted by the final outcome from the FOP decision.

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