



Recommendations Pursuant to
EXECUTIVE ORDER 13688
Federal Support for
Local Law Enforcement Equipment Acquisition

Law Enforcement Equipment Working Group

MAY 2015

2. POLICIES, TRAINING, AND PROTOCOLS FOR CONTROLLED EQUIPMENT

RECOMMENDATION 2.1 — POLICIES AND PROTOCOLS: LEAs that acquire controlled equipment through Federal programs must adopt robust and specific written policies and protocols governing General Policing Standards and Specific Controlled Equipment Standards.

- **General Policing Standards** includes policies on (a) Community Policing; (b) Constitutional Policing; and (c) Community Input and Impact Considerations.
- **Specific Controlled Equipment Standards** includes policies specifically related to (a) Appropriate Use of Controlled Equipment; (b) Supervision of Use; (c) Effectiveness Evaluation; (d) Auditing and Accountability; and (e) Transparency and Notice Considerations.
- **Record-Keeping Requirement.** Upon request, LEAs must provide a copy of the General Policing Standards and Specific Controlled Equipment Standards, and any related policies and protocols, to the Federal agency that supplied the equipment/funds.

RECOMMENDATION 2.2 — TRAINING: LEAs that acquire controlled equipment through Federal programs must ensure that its personnel are appropriately trained and that training meets the following requirements:

- **Required Annual Training on Protocols.** On an annual basis, all LEA personnel who may use or authorize use of controlled equipment must be trained on the LEA's General Policing Standards and Specific Controlled Equipment Standards.
- **Required Operational and Technical Training.** LEA personnel who use controlled equipment must be properly trained on, and have achieved technical proficiency in, the operation or utilization of the controlled equipment at issue.
- **Scenario-Based Training.** To the extent possible, LEA trainings related to controlled equipment should include scenario-based training that combines constitutional and community policing principles with equipment-specific training. LEA personnel authorizing or directing the use of controlled equipment should have enhanced scenario-based training to examine, deliberate, and review the circumstances in which controlled equipment should or should not be used.
- **Record-Keeping Requirement.** LEAs must retain comprehensive training records, either in the personnel file of the officer who was trained or by the LEA's training division or equivalent entity, for a period of at least three (3) years, and must provide a copy of these records, upon request, to the Federal agency that supplied the equipment/funds.

RECOMMENDATION 2.3 — AFTER-ACTION REVIEW: (1) LEAs must collect and retain "Required Information" (described below) when law enforcement activity that involves a "Significant Incident" requires, or results in, the use of any Federally-acquired controlled

equipment in the LEA's inventory (or any other controlled equipment in the same category as the Federally-acquired controlled equipment). (2) When unlawful or inappropriate police actions are alleged and trigger a Federal compliance review, and the Federal agency determines that controlled or prohibited equipment was used in the law enforcement activity under review, the LEA must produce or generate a report(s) containing Required Information.

- **“Significant Incident” Defined:** Any law enforcement operation or action that involves (a) a violent encounter among civilians or between civilians and the police; (b) a use-of-force that causes death or serious bodily injury²⁸; (c) a demonstration or other public exercise of First Amendment rights; or (d) an event that draws, or could be reasonably expected to draw, a large number of attendees or participants, such as those where advanced planning is needed.
- **“Required Information” to Be Collected and Retained:** (a) Identification of controlled equipment used (e.g., categories and number of units of controlled equipment used, make/model/serial number); (b) description of the law enforcement operation involving the controlled equipment; (c) identification of LEA personnel who used the equipment and, if possible, civilians involved in the incident; and (d) result of controlled equipment use (e.g., arrests, use-of-force, victim extraction, injuries).
- **Format of Information Collection and Retention.** No new form or format is required as long as the Required Information is retained in a manner that is easily accessible and organized. For example, information about the use of controlled equipment can be included in an Operations Plan, detailed in officer daily logs, or described in use-of-force reports.
- **Record-Keeping Requirement:** LEAs must retain “Significant Incident” reports and Required Information for a period of at least three (3) years and must provide a copy of these records, upon request, to the Federal agency that supplied the equipment/funds. This information also should be made available to the community the LEA serves in accordance with applicable policies and protocols including considerations regarding the disclosure of sensitive information.

²⁸ See 18 U.S.C. § 1365(h)(3): “[T]he term ‘serious bodily injury’ means bodily injury which involves (A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.”

3. ACQUISITION PROCESS FOR CONTROLLED EQUIPMENT

RECOMMENDATION 3.1 — APPLICATION INFORMATION: In addition to application requirements mandated by individual Federal acquisitions programs, LEAs must submit information in the following categories for approval in all requests for controlled equipment:

- General description of the LEA.
- Detailed justification for acquiring the controlled equipment, including a clear and persuasive explanation of the need for the equipment and the appropriate law enforcement purpose that it will serve. An LEA's application for controlled equipment should describe any previous instance in which the controlled equipment was used in a manner that deviated from the detailed justification supporting the application for that equipment.
- Number of units of the requested controlled equipment that the LEA currently has in its inventory.
- Categories of other controlled equipment acquired through Federal programs during the past three (3) years that the LEA currently has in its inventory.
- Whether the requested controlled equipment currently could reasonably be accessed through loans or mutual assistance or mutual aid agreements.
- Certification that the LEA has adopted required protocols (see Recommendation 2.1) or will adopt those protocols before physical acquisition or purchase of controlled equipment or transfer of funds.
- Certification that the LEA has provided required training (see Recommendation 2.2) or will provide that training before physical acquisition or purchase of controlled equipment or transfer of funds.
- Evidence of civilian governing body's review and approval or concurrence of the LEA's acquisition of the requested controlled equipment.²⁹
- Whether the requesting LEA has applied, or has a pending application(s), for this type of controlled equipment from another Federal agency during the current fiscal year.
- Whether any prior application for controlled equipment has been denied by a Federal agency during the past three (3) years, and, if so, the reason for the denial.
- Whether the LEA has been found to be in violation of a Federal civil rights statute or programmatic term during the past three (3) years and, if so, whether any disposition was reached or corrective actions were taken.

²⁹ For purposes of this criteria, a "governing body" is defined as the institution or organization that has direct budgetary oversight or fiscal/financial control over the requesting LEA.

RECOMMENDATION 3.2 — REGIONAL SHARING: The requesting LEA must indicate whether the requested controlled equipment is being acquired to provide a regional or multijurisdictional capability. In such cases, requesting LEAs must:

- Provide information regarding the size of the region, including the number and size of the LEA with access to the requested controlled equipment and the estimated population served.
- Certify that all LEAs in the regional sharing arrangement have adopted requisite protocols (see Recommendation 2.1) or will adopt those protocols before their personnel use the controlled equipment.
- Certify that all LEAs in the regional sharing arrangement have provided requisite training (see Recommendation 2.2) or will provide that training before their personnel use the controlled equipment.
- Certify that all LEAs in the regional sharing arrangement will adhere to the information collection and retention requirements (see Recommendation 2.3).

4. TRANSFER, SALE, RETURN, AND DISPOSAL OF CONTROLLED EQUIPMENT

RECOMMENDATION 4.1 — TRANSFER/SALE OF CONTROLLED EQUIPMENT TO OTHER LEAs: LEAs may transfer or sell any controlled equipment, except riot helmets and shields, to another LEA. Prior to finalizing any transfer or sales agreement, the transferor/seller-LEA must inform and obtain approval from the Federal agency that supplied the controlled equipment/funds. The acquiring-LEA must submit the same information (see Recommendations 3.1, 3.2) that was required of the transferor/seller-LEA to, and receive approval from, the Federal agency.

RECOMMENDATION 4.2 — TRANSFER/SALE OF CONTROLLED EQUIPMENT TO NON-LEAs: LEAs may transfer or sell only the following types of controlled equipment to non-LEAs: (a) Fixed Wing Aircraft; (b) Rotary Wing Aircraft; and (c) Command And Control Vehicles. All law enforcement-related and other sensitive or potentially dangerous components, and all law enforcement insignias and identifying markings, must be removed prior to transfer or sale. The transferor/seller-LEA must inform and receive approval from the Federal agency from which the controlled equipment or funding to purchase the equipment was acquired prior to the finalization of any transfer or sale.

RECOMMENDATION 4.3 — RETURN OF CONTROLLED EQUIPMENT: LEAs that acquire controlled equipment through DOD's 1033 program must abide by its requirements governing the return and/or disposal of controlled equipment.

RECOMMENDATION 4.4 — DISPOSAL OF CONTROLLED EQUIPMENT: LEAs must abide by all applicable Federal, State and local laws, regulations, and programmatic terms when disposing of controlled equipment. Prior to disposal, LEAs must notify the Federal agency that supplied the controlled equipment/funds.

5. OVERSIGHT, COMPLIANCE, AND IMPLEMENTATION

RECOMMENDATION 5.1 — PERMANENT LAW ENFORCEMENT EQUIPMENT WORKING GROUP: The members of the Working Group will form a permanent Federal Interagency Law Enforcement Equipment Working Group that meets regularly to support oversight and policy development functions for controlled equipment programs. The Permanent Working Group (PWG) will:

- Examine and evaluate the Controlled and Prohibited Equipment Lists for possible additions or deletions.
- Track LEA controlled equipment inventory.
- Ensure Government-wide criteria to evaluate requests for controlled equipment.
- Ensure uniform standards for compliance reviews.
- Track LEA sanctions and violations related to controlled equipment programs and usage.

RECOMMENDATION 5.2 — SANCTIONS FOR VIOLATIONS OF CONTROLLED EQUIPMENT PROGRAMS:

- **For Programmatic Violations.** For violations of any programmatic term or condition related to controlled equipment (e.g., failure to adopt required protocols, unauthorized transfers), the LEA will be suspended from acquiring additional controlled equipment through Federal programs for a minimum of 60 days. The suspension will continue until the Federal agency determines that the violation has been corrected. This does not prohibit a Federal agency from imposing other applicable sanctions according to applicable program parameters.
- **Statutory Violations.** For alleged violations of law, including civil rights laws, the matter will be referred for investigation to the Federal agency's Office of Civil Rights (OCR) or other appropriate compliance office, or the U.S. Department of Justice. If the investigation results in a finding that the LEA violated a civil rights or other relevant statute, the LEA will be sanctioned according to statute and/or the Federal agency's governing rules and policies. At a minimum, the LEA will be suspended from acquiring additional controlled equipment through Federal programs for a minimum of 60 days. The suspension will last until the Federal agency determines that the violation has been corrected.