

POTUS Orders Reduction of Military-Style Equipment for Law Enforcement Agencies

On December 18, 2014 President Obama issued an Executive Order establishing the *President's Task Force of 21st Century Policing*. Since that time, the task force has met and discussed what steps can be taken in order to not only reduce crimes, but increase trust between law enforcement agencies and the communities that they serve. Of particular concern to the Task Force, is what it describes as the “militarization” of law enforcement.

On January 16, 2015, President Obama issued Executive Order 13688, *Federal Support for Local Law Enforcement Equipment Acquisition*, wherein the President tasked a working group to “identify actions that can improve Federal support for the appropriate use, acquisition, and transfer of controlled equipment by State, local, and Tribal law enforcement agencies (LEAs).”¹ The working group has now released a report (the Report) of its recommendations, which President Obama has endorsed. A copy of the complete Report is attached to this article.

The Federal Government has provided LEAs with equipment ranging from administrative items to military-style equipment. The Report identifies certain equipment which will no longer be provided by the Federal Government, and equipment which may be provided under limited circumstances.

Prohibited Equipment

Most importantly, the Report identifies the following equipment (referred to as “Prohibited Equipment”) that should not be authorized for LEAs to acquire via transfer from Federal agencies or purchase using Federally-provided funds:

- **Tracked Armored Vehicles:** Vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.
- **Weaponized Aircraft, Vessels, and Vehicles of Any Kind:** These items will be prohibited from purchase or transfer with weapons installed.
- **Firearms and Ammunition of .50-Caliber or Higher**
- **Grenade Launchers:** Firearm or firearm accessory designed to launch small explosive projectiles.

¹ “Recommendations Pursuant to Executive Order 13688 Federal Support for Local Law Enforcement Equipment Acquisition,” Law Enforcement Equipment Working Group (May 2015).

- Bayonets: Large knives designed to be attached to the muzzle of a rifle/shotgun/long gun for the purposes of hand-to-hand combat.
- Camouflage Uniforms: Does not include woodland or desert patterns or solid color uniforms.

Controlled Equipment

The Report also identifies several pieces of equipment (referred to as “Controlled Equipment”) which have “significant utility for State, local, or Tribal law enforcement operations, and LEAs, other than those solely serving schools with grades ranging from kindergarten through grade 12...” As a result, LEAs may continue to acquire the following pieces of equipment provided, however, that LEAs submit a “detailed justification outlining their need for procuring the equipment and certification that agency controls, such as the training and equipment use policies and procedures..., are in place to prevent misuse of the equipment.” Such equipment includes the following:

- Manned Aircraft, Fixed Wing: Powered aircraft with a crew aboard, such as airplanes, that use a fixed wing for lift.
- Manned Aircraft, Rotary Wing: Powered aircraft with a crew aboard, such as helicopters, that use a rotary wing for lift.
- Unmanned Aerial Vehicles: A remotely piloted, powered aircraft without a crew aboard.
- Armored Vehicles, Wheeled: Any wheeled vehicle either purpose-built or modified to provide ballistic protection to its occupants, such as a Mine-Resistant Ambush Protected (MRAP) vehicle or an Armored Personnel Carrier.
- These vehicles are sometimes used by law enforcement personnel involved in dangerous operating conditions, including active shooter or similar high-threat situations. These vehicles often have weapon-firing ports.
- Tactical Vehicles, Wheeled: A vehicle purpose-built to operate on- and offroad in support of military operations, such as a HMMWV (“Humvee”), 2.5-ton truck, 5-ton truck, or a vehicle with a breaching or entry apparatus attached. These vehicles are sometimes used by law enforcement in rough terrain or inclement weather for search and rescue operations, as well as other law enforcement functions.
- Command and Control Vehicles: Any wheeled vehicle either purpose-built or modified to facilitate the operational control and direction of public safety units responding to an incident. Command and Control vehicles provide a variety of capabilities to the incident Commander, including, but not limited to, the provision for enhanced communications and other situational awareness capabilities.

- **Specialized Firearms and Ammunition Under .50-Caliber** (excludes firearms and ammunition for service-issued weapons): Weapons and corresponding ammunition for specialized operations or assignment. This excludes service issued handguns, rifles, or shotguns that are issued or approved by the agency to be used during the course of regularly assigned duties.
- **Explosives and Pyrotechnics**: Includes “flash bangs” as well as explosive breaching tools often used by special operations units.
- **Breaching Apparatus** (e.g. battering ram or similar entry device): Tools designed to provide law enforcement rapid entry into a building or through a secured doorway. These tools may be mechanical in nature (a battering ram), ballistic (slugs), or explosive.
- **Riot Batons** (excluding service-issued telescopic or fixed-length straight batons): Non-expandable baton of greater length (generally in excess of 24 inches) than service-issued types and are intended to protect its wielder during melees by providing distance from assailants.
- **Riot Helmets**: Helmets designed to protect the wearer’s face and head from injury during melees from projectiles including rocks, bricks, liquids, etc. Riot helmets include a visor which protects the face.
- **Riot Shields**: Shields intended to protect wielders from their head to their knees in melees. Most are designed for the protection of the user from projectiles including rocks, bricks, and liquids. Some afford limited ballistic protection as well. Riot shields may also be used as an offensive weapon to push opponents.

Policy

The Report makes several recommendations on the policies that a LEA must have in order to obtain Controlled Equipment. For instance, LEAs that request Controlled Equipment must have at least the following policies:

1. Community Policing policy;
2. Constitutional Policing policy;
3. Community Input and Impact Considerations policy;
4. Policy on the Appropriate Use of Controlled Equipment;
5. Policy on the Supervision of Use of Controlled Equipment;
6. Policy on the Effectiveness Evaluation of Controlled Equipment;
7. Policy on the Auditing and Accountability of Controlled Equipment; and
8. Policy on Transparency and Notice Considerations.

Training

Additionally, the Report includes recommendations on training requirements for those LEAs which acquire Controlled Equipment. These training requirements include the following:

1. **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.
2. **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.
3. **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.

After-Action Review

The Report also recommends that certain "Required Information"² be collected when a "Significant Incident"³ 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)." The Federal Government may collect the Required Information if there is an allegation of unlawful or inappropriate police action and/or during a compliance review.

Recommendations

While the Report does not include provisions on the surrender of any Prohibited Equipment or Controlled Equipment already provided to LEAs by the Federal Government, agencies should be on the look-out for such orders in the future. LEAs which currently possess Controlled Equipment should be sure to review their policies and training requirements relative to that equipment to ensure that they are up to date and comply with the recommendations in the Report. Agencies wishing to acquire Controlled Equipment from the Federal Government should be aware of the new acquisition procedures outlined in the Report.

² "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).

³ "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 injury; (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.



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