

LAW ENFORCEMENT EQUIPMENT PERMANENT WORKING GROUP

Frequently Asked Questions

1. What is required under Executive Order 13688?

On January 16, 2015, President Barack Obama signed Executive Order 13688 establishing a working group to, among other things, develop recommendations to harmonize Federal procedures governing the provision of certain equipment through Federal equipment programs to Law Enforcement Agencies (LEAs) and to ensure that LEAs have proper policies and training in place regarding the appropriate use of such equipment. The working group was co-chaired by the Departments of Justice, Homeland Security, and Defense, with members representing the Departments of Interior, Treasury, and Education, and the General Services Administration, among others. In May 2015, the working group delivered recommendations to the President.

2. Did the President accept the Working Group's Recommendations? When did they take effect?

The President accepted the Working Group's Recommendations on May 18, 2015. The Recommendations officially took effect in Fiscal Year 2016 (beginning October 1, 2015), but the Prohibited Equipment List took effect upon the President's acceptance of the Recommendations. A six-month transition period (through March 30, 2016) was implemented to allow LEAs to perform their duties to the fullest extent while working to comply with new training and policy requirements.

3. What is the "Permanent Working Group"?

The Recommendations accepted by the President included the establishment of a Permanent Working Group, or PWG, to implement the Recommendations. The PWG is comprised of and led by the same Federal agencies as the original law enforcement equipment working group.

4. Which Federal equipment programs are governed by the Executive Order Recommendations?

The Executive Order Recommendations apply to Federal programs that provide equipment to State, local, or Tribal LEAs through excess equipment transfers (including GSA donations), asset forfeiture programs, and Federal grants.

5. Which LEAs do the Executive Order Recommendations affect?

The Executive Order focused on the provision of equipment through Federal programs to State, local, and Tribal LEAs because of their role as the primary policing agency in a

community. This does not include the National Guard, other first responders, or Federal LEAs.

6. How was the public engaged during the development of the Recommendations?

The Working Group met with numerous stakeholders – including law enforcement groups, civil rights and civil liberties organizations, academia, Tribes, and local communities. See Appendix C of the Recommendations. The engagements consisted of meetings, receipt of recommendations or concerns, and expert consultations. The release of the report was only the beginning of the Federal Government’s engagement with stakeholders on this issue. Since the Recommendations were released, the PWG met with stakeholders on a regular basis to receive input on how best to implement the recommendations, a process that will be ongoing and continuous.

7. How did the Federal Government decide which equipment categories to include on the Prohibited and Controlled Equipment Lists?

The original working group met with a variety of subject matter experts, law enforcement groups, civil rights and community leaders, and Federal programs staff to consider a number of factors, including building trust between law enforcement and the community, officer safety, the utility of the equipment to law enforcement operations, and the potential impact on the community if the equipment was overused, misused, or used inappropriately.

8. Are the equipment lists ever reviewed?

Yes. The Prohibited and Controlled Equipment Lists are reviewed annually to determine whether categories should be added, deleted, or refined. The PWG conducted the first annual equipment review from July to September 2016 in preparation for implementation in Fiscal Year 2017. Changes were made to the definitions of equipment categories, which are available at <http://www.ojp.usdoj.gov/PWG.htm>.

9. Why were tracked armored vehicles prohibited but wheeled armored vehicles controlled?

Armored vehicles can provide critical officer and civilian safety protection and transport into and out of high-risk situations. Tracked armored vehicles that had been available through Federal programs, however, were designed specifically for use in military operations, and their appearance may undermine community trust when used in support of civilian law enforcement activities.

10. What happens to equipment that an LEA previously acquired from Federal programs but is now considered prohibited?

During the first six months of Fiscal Year 2016, the Federal Government recalled equipment that is now on the Prohibited Equipment List. The recall, however, was limited to the equipment acquired through the Department of Defense's 1033 program, which is the only relevant Federal program that retains title to the equipment it transfers. LEAs that returned tracked armored vehicles received priority for equivalent Controlled Equipment.

11. What is the difference between a "Grenade Launcher," which is prohibited, and a Less Lethal Launcher which is controlled?

For FY2016, the Prohibited Equipment List included a category called "Grenade Launchers," which had been available prior to the Executive Order Recommendations as excess military equipment primarily through DOD's 1033 program. The definition of this category caused some confusion whether all launchers, including those specifically designed to propel less lethal projectiles, were prohibited or uncontrolled. The new definitions clarify that Less Lethal Launchers are considered Controlled Equipment. Paintballs and paintball guns are not considered Less Lethal Launchers.

12. Why are certain types of camouflage uniforms prohibited while others are not controlled?

Camouflage uniforms are generally prohibited as they present a military appearance for civilian law enforcement. The Recommendations recognize, however, that there may be certain circumstances in which camouflage uniforms have more significant operational utility (e.g. law enforcement operations in woodland, forest, or desert environments). If those limited reasons are presented, law enforcement may acquire uniforms to use in situations where they actually camouflage the wearer. Note that LEAs may never wear camouflage uniforms acquired through Federal programs in cities, towns, or other urban or populous areas. There is no prohibition on LEAs acquiring solid color uniforms, helmets, or other outerwear through Federal programs.

13. In the Specialized Firearms category in the Controlled Equipment List, what is considered "service-issued" or a weapon issued for "regularly assigned duties"?

This refers to the standard firearms or weapons that an LEA generally issues to all sworn officers, and not just to certain specialized units, in its agencies. Weapons issued for regularly assigned duties are not considered Controlled Equipment.

14. Why were Riot Helmets removed from the Controlled Equipment List?

In its annual equipment review, the PWG considered a number of factors consistent with the process that created the equipment lists. These factors include officer safety, utility

of equipment to law enforcement, building trust between law enforcement and the community, and the impact on the community of misuse, overuse, and inappropriate use. Based on this analysis and considering the significant protection that helmets provide to law enforcement, the PWG removed this category from the Controlled Equipment List. Please note that Riot/Crowd Control Batons and Shields continue to be Controlled Equipment.

15. Is the Controlled Equipment List intended to restrict the amount of Controlled Equipment in the possession of LEAs?

No. As the report indicates, the Controlled Equipment List includes categories of equipment that have utility for law enforcement, including for the protection of law enforcement officers. Items on the Controlled Equipment List are often used to plan for and respond to demonstrations and crowd control situations, and the Recommendations are designed to ensure that LEAs acquiring this equipment from Federal programs have the appropriate policies, training, and accountability measures in place.

16. Can LEAs acquire items on the Prohibited or Controlled Equipment Lists using non-Federal resources?

The Recommendations apply only to equipment acquired through Federal programs.

17. Aren't the policies that LEAs are supposed to have in place when they acquire Controlled Equipment too prescriptive?

The Recommendations require that LEAs must have in place policies that are consistent with three General Policing and five Specific Controlled Equipment Standards. In fact, many LEAs already have policies that adhere to these principles. Aligning LEA policies with these standards will help ensure that LEAs acquiring Controlled Equipment will use such equipment appropriately.

18. The definition of "Significant Incident" encompasses many law enforcement operations, especially for large LEAs. Isn't this too much of a data collection burden for LEAs?

The Working Group took into consideration the potential reporting burden and left considerable discretion to the LEA on how to collect and retain "Required Information." As the report indicates, the data must be collected and retained by the LEA to be furnished if requested by the Federal program or compliance agency. No new form is required as long as the "Required Information" is easily accessible and organized. Additionally, the description of "Significant Incident" includes those events about which LEAs already are (or should be) collecting and retaining information.

19. Why are there still so many different requirements among Federal equipment programs? I thought the Executive Order was supposed to fix that.

The Recommendations harmonized processes within and among Federal equipment programs and created a Government-wide Prohibited and Controlled Equipment List. These should be viewed as a baseline, or “floor,” to which each Federal equipment program must adhere. However, Federal agencies and programs may establish additional guidelines consistent with the differing underlying legal framework and purposes of the programs at issue.