



FEMA

**Grant Programs Directorate Information Bulletin
No. 407**

MEMORANDUM FOR: All State Administrative Agency Heads
All State Administrative Agency Points of Contact
All Urban Area Security Initiative Points of Contact
All State Homeland Security Directors
All State Emergency Management Agency Directors
All Eligible Transit Agencies
All Private Sector Transportation Security Partners
All Public and Private Sector Port Security Partners
All Tribal Nation Points of Contact

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SUBJECT: **Use of Grant Funds for Controlled Equipment**

The purpose of this Information Bulletin (IB) is to provide grant applicants, recipients, and subrecipients with guidance regarding the requirements when applying for, or expending grant funds for, controlled equipment expenditures and using grant-funded controlled equipment. This IB is applicable to all grants awarded by the Department of Homeland Security/Federal Emergency Management Agency (DHS/FEMA) on or after October, 1 2015.¹

This IB was developed as part of the implementation of [*Executive Order \(EO\) 13688: Federal Support for Local Law Enforcement Equipment Acquisition*](#), issued January 16, 2015, and the [*Recommendations Pursuant to Executive Order 13688*](#), which collectively established a *Prohibited Equipment List* and a *Controlled Equipment List*, and identified actions necessary to improve Federal support for the appropriate acquisition, use, and transfer of controlled equipment by state, local, tribal, territorial, and private grant recipients.

The *Prohibited Equipment List* identifies categories of equipment that recipients are prohibited from acquiring using federally-provided funds or via transfer from federal agencies, and includes:

¹ Information Bulletin 407 does not apply to FEMA non-disaster grant programs awarded in Fiscal Year 2015 or in prior years, if such awards were made by FEMA to the grant recipient prior to October 1, 2015. However, grant recipients should consult the Authorized Equipment List for additional instructions that were in place for FY 2015 and prior years prior to obligating funds for this category of equipment. In some categories, grant recipients must obtain a waiver from FEMA by consulting with their Program Analyst and providing a detailed justification for obligating funds in this category, and receiving approval to obligate funds as indicated in the Authorized Equipment List.

- **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 of .50-Caliber or Higher**
- **Ammunition of .50-Caliber or Higher**
- **Grenade Launchers:** Firearm or firearm accessory designed to launch small explosive projectiles.
- **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 Used for Urban Settings:** Does not include woodland or desert patterns or solid color uniforms.

The *Controlled Equipment List* identifies categories of equipment that have significant utility for state, local, tribal, territorial, and private grant recipients. Recipients may continue to acquire controlled equipment through Federal assistance programs. However, because of the nature of the equipment and the potential impact on communities, additional controls will be imposed on the acquisition, use, and transfer of this equipment. While several of the items below are not allowable expenses under DHS/FEMA preparedness grants², the full *Controlled Equipment List* includes:

- **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 (including Small Unmanned Aerial Systems (SUAS)).
- **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.
- **Tactical Vehicles, Wheeled:** A vehicle purpose-built to operate on- and off-road 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.
- **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.
- **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 (Note: despite its inclusion on the Government-wide *Controlled Equipment List*, equipment defined under this category is not an allowable expense under any FEMA preparedness grant program).
- **Explosives and Pyrotechnics:** Includes “flash bangs” as well as explosive breaching tools often used by special operations units.

² Recipients and sub-recipients should refer to the annual Notice of Funding Opportunity, the Authorized Equipment List, or contact their FEMA Program Analyst for information regarding the allowability of specific equipment categories.

- **Breaching Apparatus (e.g., battering ram, 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. (Note: despite its inclusion on the Government-wide *Controlled Equipment List*, equipment defined under this category is not an allowable expense under any FEMA preparedness grant program).
- **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. (Note: despite its inclusion on the Government-wide *Controlled Equipment List*, equipment defined under this category is not an allowable expense under any FEMA preparedness grant program).
- **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. (Note: despite its inclusion on the Government-wide *Controlled Equipment List*, equipment defined under this category is not an allowable expense under any FEMA preparedness grant program).

While EO 13688 speaks directly to Law Enforcement Agencies (LEAs), through this IB, FEMA will apply the same requirements and conditions to all controlled equipment regardless of the recipient's designation as, or affiliation with, law enforcement to ensure a consistent approach toward controlled equipment expenditures and use by all FEMA recipients.

I. Application Requirements for Controlled Equipment Expenditures

Any entity³ that applies for FEMA grants for controlled equipment expenditures must complete FEMA Form (FF) 087-0-0-1 *Controlled Equipment Request Form* and submit it to the State Administrative Agency (SAA) or to FEMA if applying through a grant program whose applications are made directly to FEMA. The form may be submitted at the time of application for the award or can be submitted at any time during the award period of performance as long as it is prior to the acquisition of the controlled equipment.

Using FF 087-0-0-1, the entity must include a clear and persuasive explanation demonstrating the need for the controlled equipment and the purpose that it will serve. The entity will be asked to supply information about the current inventory of controlled equipment acquired through Federal programs, pending applications for controlled equipment, previous denials for controlled equipment, and any findings of violations of federal civil rights statutes or programmatic terms involving controlled equipment.

³ Entity refers to the recipient or subrecipient that will be the end user of the controlled equipment. *Recipient* - a non-federal entity that receives a federal award directly from a federal awarding agency to carry out an activity under a federal program. The term recipient does not include subrecipients. See also §200.69 Non-Federal entity. *Subrecipient* - a non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.

Additionally, using FF 087-0-0-1, the entity will certify that they have adopted, or will adopt prior to acquiring controlled equipment, applicable policies and protocols, meet the training requirements, and will adhere to the records keeping requirements and after-action report requirements, as described below. The entity will also certify that it will abide by all applicable federal, state, local, and tribal laws, regulations, and programmatic terms and conditions.

II. Policy and Protocol Requirements

- a) The entity must have written policies and protocols that specifically govern the (1) appropriate use of controlled equipment; (2) supervision of use of controlled equipment; (3) effectiveness evaluation; (4) auditing and accountability; and (5) transparency and notice considerations as defined below:

- 1) ***Appropriate Use of Controlled Equipment:*** Requesting organizations should examine scenarios in which controlled equipment will likely be deployed, the decision-making processes that will determine whether controlled equipment is used, and the potential that both use and misuse of controlled equipment could create fear and distrust in the community. Protocols should consider whether measures can be taken to mitigate that effect (e.g., keep armored vehicles at a staging area until needed) and any alternatives to the use of such equipment and tactics to minimize negative effects on the community, while preserving officer safety. (Recommendations Pursuant to EO 13688, pg. 19 – 20)
- 2) ***Supervision of Use:*** The protocols must specify appropriate supervision of personnel operating or utilizing controlled equipment. Supervision must be tailored to the type of equipment being used and the nature of the engagement or operation during which the equipment will be used. Policies must describe when a supervisor of appropriate authority is required to be present and actively overseeing the equipment's use in the field. (Recommendations Pursuant to EO 13688, pg. 20)
- 3) ***Effectiveness Evaluation:*** The protocols must articulate that the requesting organization will monitor and evaluate regularly the effectiveness and value of controlled equipment to determine whether continued deployment and use is warranted on operational, tactical, and technical grounds. Requesting organizations should review after-action reports routinely and analyze any data on, for example, how often controlled equipment is used or whether controlled equipment is used more frequently in certain law enforcement operations or in particular locations or neighborhoods. (Recommendations Pursuant to EO 13688, pg. 20)
- 4) ***Auditing and Accountability:*** There must be strong auditing and accountability provisions in the protocols that state that the requesting organization's personnel will agree to and comply with and be held accountable if they do not adhere to agency, state, local, tribal, territorial, and Federal policies associated with the use of controlled equipment. (Recommendations Pursuant to EO 13688, pg. 20)
- 5) ***Transparency and Notice Consideration:*** The protocols must articulate that the requesting organization will engage the community regarding acquisition of

controlled equipment, policies governing its use, and review of significant incidents (see Recommendation 2.3 below), with the understanding that there are reasonable limitations on disclosures of certain information and law enforcement sensitive operations and procedures. (Recommendations Pursuant to EO 13688, pg. 20)

b) **For LEAs Only**⁴

LEA recipients or subrecipients requesting controlled equipment must have written policies and protocols on (1) Community Policing; (2) Constitutional Policing; and (3) Community Input and Impact Considerations.⁵

III. Training Requirements

The entity must provide or obtain necessary training regarding appropriate use of controlled equipment prior to the use of controlled equipment, including:

a) **Technical Proficiency:**

All entity personnel who will use controlled equipment must be trained properly on, and have achieved technical proficiency in, the operation or utilization of the controlled equipment at issue prior to its use. The controlled equipment may be used for technical training and certification prior to deployment for official use.

b) **Scenario-Based Training:**

To the extent possible, trainings related to controlled equipment should include scenario-based training. 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. To the extent possible, the LEA specifically should include scenario-based training that combines constitutional and community policing principles with equipment-specific training.

c) **Training on Civil Rights and Liberties**

Annual, appropriate, and relevant training for grant recipient personnel on the 1st, 4th, and 14th Amendments is required. Training on how to protect the civil rights and civil liberties of those in the surrounding community where the controlled equipment will be used is vital to ensuring that the use of controlled equipment complies with constitutional standards for the protection of civil rights and civil liberties. Training objectives should define and explain relevant concepts and demonstrate the application of such concepts through equipment-based scenarios to show appropriate and proper use of controlled equipment by both law enforcement and non-law enforcement personnel and the negative effects and consequences of misuse.

⁴ LEAs include contracted LEAs or LEAs activated as part of a mutual aid agreement or memorandum of understanding using or operating grant funded controlled equipment.

⁵ *Community Policing* is the concept that trust and mutual respect between police and the communities they serve are critical to public safety. Community policing fosters relationships between law enforcement and the local community which promotes public confidence in LEAs and, in turn, enhances LEAs ability to investigate crimes and keep the peace. *Constitutional Policing* protocols emphasize that all police work should be carried out in a manner consistent with the requirements of the U.S. Constitution and federal law. Policies must include protocols on First Amendment, Fourth Amendment, and Fourteenth Amendment principles in law enforcement activity, as well as compliance with Federal and State civil rights laws. *Community Input and Impact* protocols must identify mechanisms that LEAs will use to engage the communities they serve to inform them and seek their input about LEAs' actions, role in, and relationships with the community. Law enforcement exists to protect and serve the community, so it is axiomatic that the community should be aware of and have a say in how they are policed. LEAs should make particular efforts to seek the input of communities where controlled equipment is likely to be used so as to mitigate the effect that such use may have on public confidence in the police. This could be achieved through the LEAs' regular interactions with the public through community forums, town halls, or meetings with the Chief or community outreach divisions.

- d) **For LEAs Only - General Policing Standards** (including contracted LEAs or LEAs activated as part of a mutual aid agreement or memorandum of understanding using or operating grant funded controlled equipment):

On an annual basis, all LEA personnel who may use or authorize use of controlled equipment must be trained on LEAs' General Policing Standards including (1) Community Policing; (2) Constitutional Policing; and (3) Community Input and Impact Considerations. For additional information on these General Policing Standards see <https://www.bja.gov/programs/Controlled-Equipment-Standards.pdf>.

IV. After-Action Report Requirements Following a Significant Event

- a) The entity must collect and retain *Required Information* (see below) when a significant incident or event requires, or results in, the use of any controlled equipment purchased with DHS/FEMA grant funds. A significant incident or event includes:
- A demonstration or other public exercise of First Amendment rights or any other 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;
 - When unlawful or inappropriate police actions are alleged and trigger a federal compliance review, and FEMA determines that controlled equipment was used in the law enforcement activity under review; and
 - Any law enforcement operation or action that involves (1) a violent encounter among civilians or between civilians and the police; and/or (2) a use-of-force that causes death or serious bodily injury.⁶
- b) Required Information to be collected and retained for after-action review (AAR):
- Identification of controlled equipment used (e.g., categories and number of units of controlled equipment used, make/model/serial number);
 - Description of the significant incident/event involving the controlled equipment;
 - Identification of personnel who used the equipment and, if possible, a list of those involved in the incident; and
 - Result of controlled equipment use (e.g., arrests, use-of-force, victim extraction, injuries).

V. Record Keeping Requirements

- a) **Documented Policies and Protocols Records:**

The entity must retain written policies and procedures that govern the (1) Appropriate use of controlled equipment; (2) Supervision of use of controlled equipment; (3) Effectiveness evaluation; (4) Auditing and accountability; and (5) Transparency and notice considerations.

Additionally, upon request, LEAs must provide a copy of the General Policing Standards and Specific Controlled Equipment Standards, and any related policies and protocols, to DHS/FEMA.

⁶ Serious bodily injury, as defined by 18 U.S.C. § 1365(h), is the 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.

b) **Training Records:**

The entity must retain comprehensive training records, either in the personnel file of the individual who was trained or by the recipient's training division or equivalent entity, for a period of at least three (3) years after training date, and must provide a copy of these records, upon request, to DHS/FEMA.

c) **After-Action Review Records:**

The entity must retain After-Action Review reports with the Required Information (IV.a.) following any significant incident report for a period of at least three (3) years and must provide a copy of these records, upon request, to DHS/FEMA. This information shall also be made available to the community served in accordance with applicable policies and protocols including considerations regarding the disclosure of sensitive information.

VI. Additional Requirements for SUAS

All requests to purchase SUAS with FEMA grant funding must also include the policies and procedures in place to safeguard individuals' privacy, civil rights, and civil liberties of the jurisdiction that will purchase, take title to, or otherwise use the SUAS equipment, see Presidential Memorandum: [Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties, in Domestic Use of Unmanned Aircraft Systems](#), issued February 20, 2015.

VII. Regional Capability

If the controlled equipment will provide a regional or multi-jurisdictional capability, all entities in the regional sharing agreement must meet the aforementioned policy and protocol requirements, training requirements, after-action analysis report requirements, and record keeping requirements. Acquisition of controlled equipment – due to size, cost, scarcity, or other reason – for use in regional sharing arrangements, is strongly encouraged.

VIII. Disposition of Controlled Equipment

Prior to the disposition of the controlled equipment, recipients must request disposition instructions from FEMA, consistent with the terms of 2 C.F.R. Part 200 and the award agreement. Recipients must abide by all applicable federal, state, local, tribal, and territorial laws, regulations, and programmatic terms when disposing of controlled equipment.

IX. Transfer of Controlled Equipment

Controlled equipment must remain in the possession of the original FEMA grant recipient and may not be transferred without written permission from FEMA. FEMA reserves the right to allow for the transfer of controlled equipment to another FEMA recipient on a case-by-case basis. The use of controlled equipment under an MOU or other regional sharing agreement as listed under section VI above does not constitute a transfer of controlled equipment.

X. Additional Requirements

All grant recipients that are authorized to utilize federal funding to procure or acquire controlled equipment must comply with 2 C.F.R. Part 200 and the terms of the award agreement with FEMA and the special conditions that are placed on the award by FEMA. The same terms and conditions with respect to the management, use, and disposition of the equipment apply to the receiving entity in instances when FEMA authorizes the transfer of controlled equipment from the recipient to another entity.

XI. Violations of Use of Controlled Equipment

FEMA may take appropriate action according to 2 C.F.R. Part 200 for violations of any federal statutes, regulations of the terms and conditions of the award related to controlled equipment (e.g., failure to adopt required protocols, unauthorized transfers).

For alleged violations of law involving the grant-funded controlled equipment, including civil rights laws, the matter will be referred for investigation to FEMA's Office of Civil Rights (OCR), DHS's Office of Civil Rights and Civil Liberties, other appropriate compliance office, or the U.S. Department of Justice. If the investigation results in a finding that the recipient violated a civil rights or other relevant statute, appropriate remedies for noncompliance will be taken against the recipient. The actions or suspension will last until FEMA determines that the violation has been corrected.

FEMA will continue to collaborate with federal agency partners to ensure that there is a consistent and reasonable approach to the restrictions placed on controlled equipment expenditures while continuing to support these investments when there is a justifiable need. Further, FEMA will continue to maintain an awareness of the evolving policy developments related to controlled equipment expenditures and keep grant recipients up to date on future developments.

Questions regarding this IB, whether the IB applies to a particular project, or guidance on controlled equipment expenditures may be directed to the appropriate FEMA GPD Program Analyst or the Centralized Scheduling and Information Desk at askcsid@fema.gov or 1-800-368-6498.