

LAW AND PUBLIC SAFETY

DIVISION OF CRIMINAL JUSTICE

Body Armor Replacement Fund Program Rules

Proposed Amendments: N.J.A.C. 13:80A-1.4, 2.4, 3.1, and 3.4

Proposed New Rule: N.J.A.C. 13:80A-1.5

Authorized by: Stephen J. Taylor, Director, Division of Criminal Justice.

Authority: N.J.S.A. 52:17B-4.4 and 101.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2012-092.

Submit written comments via overnight or regular mail only by September 14, 2012 to:

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Attn: Body Armor Replacement Fund Program (Public Comments)

The agency proposal follows:

Summary

The Division of Criminal Justice (Division) proposes to amend the Body Armor Replacement Fund Program rules, N.J.A.C. 13:80A. Because the Division has provided a 60-day comment period, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

This chapter governs the grant program, which offers local and certain State law

enforcement and correctional agencies with funding to offset the costs of purchasing body armor vests for their eligible officers. This grant program is supported by the Body Armor Replacement Fund (Fund), a non-lapsing revolving fund, financed through a \$1.00 fee assessed on convictions for motor vehicle and traffic offenses and on forfeitures of bail. N.J.S.A. 52:17B-4.4. The rules in this chapter are the guidelines followed by the Division to administer the grant program, and the procedures followed by agencies when applying for grant funds.

The Director of the Division of Criminal Justice (Director) proposes to add a new waiver provision and to amend existing rules to include a mandatory body armor wear policy (mandatory wear policy) for participating agencies. The new waiver rule authorizes the Director to waive the existing rules, if the waiver comports with the statutory policy of the Body Armor Replacement Fund Act, N.J.S.A. 52:17B-4.4, and as a matter of officer safety. The waiver provision is also added to comply with the Governor's Executive Order No. 2 (2010) "common sense principles" for easing regulatory restrictions.

On behalf of the Attorney General, the Director proposes to add a new requirement that each agency applying for a State Body Armor Replacement Fund grant have a mandatory wear policy in effect. This requirement is proposed as a matter of officer safety to protect the lives of New Jersey's officers. This requirement affords each agency's head flexibility to determine its own policy and exceptions based on its own specialized needs.

New Jersey's proposed requirement will be similar to a Federal requirement for the Federal Bulletproof Vest Partnership Program. In 2011, the United States Attorney General announced that the Department of Justice's Federal Bulletproof Vest Partnership grant program required agencies receiving funding to have a written mandatory wear policy for uniformed patrol officers. This requirement was imposed to reduce officer deaths and disabling injuries and

in response to a national 37 percent increase in officer deaths in 2010 as reported by the Office of Justice Programs. Likewise, New Jersey has similar concerns and the proposed new rule and amendments will maximize officer safety.

A summary of each section of the chapter proposed for a new rule and amendments follows:

The Division proposes to amend N.J.A.C. 13:80A-1.4 to add the definition of “mandatory wear policy.” The “mandatory wear policy” is defined as “an applicant agency’s written policy to wear body armor for uniformed officers while engaged in patrol or field operations. The terms and exemptions of this mandatory wear policy will be determined by each applicant agency head in the reasonable exercise of his or her discretion.” This policy is based on the Body Armor Model Policy (April 1999) developed by the International Association of Chiefs of Police (IACP), and which has been endorsed by the United States Attorney General and the Department of Justice.

New N.J.A.C. 13:80A-1.5 is proposed to authorize the Director to waive existing rules. The proposed waiver rule may be considered under limited circumstances, such as, assisting eligible agencies to replace defective body armor not compliant with National Institute of Justice standards or providing a Statewide distribution of grant funds more than once a year.

The Division proposes to amend N.J.A.C. 13:80A-2.4, Application components, to require the agency head to certify that the applicant agency has a mandatory wear policy. The certification will be achieved by requiring the applicant agency head, if applicable, to check mark a box in the online application indicating that the applicant agency has a mandatory wear policy.

The Division proposes to amend N.J.A.C. 13:80A-3.1, Initial and successive program

grants, to conform the language of the section to current Division practice. The existing rule language references the first distribution from the Fund in 1998 and states that successive grants will be offered annually. Language references to “initial” and “successive” grants are outdated since the program distributes funds to all eligible applicants, based on a formula, on an annual basis, and not dependant on prior application. Therefore, the section heading will be amended to delete “initial and successive”; and the portion of the section which reads, “initial grants to eligible applicants shall be awarded at the conclusion of the State Fiscal Year 1998. Successive grants ...” will also be deleted, and be amended to only include the phrase “Grants shall be awarded annually upon determination of available funds and as a part of an application process,” to clarify that grants will be distributed as a part of a Statewide grant application process.

The Division proposes to amend N.J.A.C. 13:80A-3.4, Grant award process, to delete subsection (g) related to special grant awards. This section addresses the circumstances of permitting a special award from the fund for premature replacement of defective body armor during a period of Statewide recall. Proposed new N.J.A.C. 13:80A-1.5, dealing with waivers, satisfies the underlying public policy supporting subsection (g) and allows the Director greater flexibility to address instances of limited defective body armor recall.

Social Impact

The proposed new rule and amendments provide grant funds to eligible agencies to support the purchase of life-saving body armor for their eligible officers. The Division has determined that the proposed new rule and amendments will have a positive social impact on local law enforcement and correctional agencies, the Division of State Police, the Department of Corrections, the Division of Criminal Justice, the Juvenile Justice Commission, the State Parole Board, and the Administrative Office of the Courts.

Economic Impact

The proposed new rule and amendments will have insignificant economic impact on local law enforcement and correctional agencies, the Division of State Police, the Department of Corrections, the Division of Criminal Justice, the Juvenile Justice Commission, the State Parole Board, and the Administrative Office of the Courts. According to the Department of Justice, Bureau of Justice Assistance's national survey of criminal justice agencies, 99.4 percent of criminal justice agencies' officers currently use body armor, 59 percent already require officers to wear body armor some of the time, and 49 percent have a written policy. (See the Bureau of Justice Assistance/Police Executive Research Forum (BJA/PERF) Body Armor National Survey: Protecting the Nation's Law Enforcement Officers, Phase II Final Report to BJA (August 9, 2009)).

Federal Standards Statement

The United State Attorney General has imposed a similar mandatory wear policy on applicants for its Federal Bulletproof Vest Program. However, a Federal standards analysis is not required because the proposed new rule and amendments are not subject to any Federal standards or requirements.

Job Impact

The proposed new rule and amendments are not expected to result in the generation or loss of jobs in the State. The new rule and amendments are proposed to prevent harm and to save lives.

Agriculture Industry Impact

The proposed new rule and amendments will not have any impact on the agricultural industry in New Jersey or elsewhere. The new rule and amendments are proposed to prevent

harm and to save lives.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rule and amendments do not impose reporting, recordkeeping, or other compliance requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule and amendments apply only to eligible State and local law enforcement and correctional agencies.

Housing Affordability Impact Analysis

The proposed new rule and amendments will have no impact on affordable housing in New Jersey, nor evoke a change in the average costs associated with housing. The proposed new rule and amendments concern the purchase of life-saving body armor for eligible State and local law enforcement officers to prevent harm and save lives.

Smart Growth Development Impact Analysis

The proposed new rule and amendments will have an insignificant impact on smart growth development. There is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey. The proposed new rule and amendments concern the purchase of life-saving body armor for eligible State and local law enforcement officers to prevent harm and save lives.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. PURPOSE, SCOPE, DEFINITIONS

13:80A-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

“Mandatory wear policy” is an applicant agency’s written policy to wear body armor for uniformed officers while engaged in patrol or field operations. The terms and exemptions of this mandatory wear policy will be determined by each applicant agency head in the reasonable exercise of his or her discretion.

...

13:80A-1.5 Waiver

(a) The rules of this chapter may be relaxed by the Director upon a showing of undue hardship, economic or otherwise, of an applicant; that the waiver of the rule would not unduly burden any affected parties; and that the waiver is consistent with the underlying purposes of the Body Armor Replacement Fund Act, N.J.S.A. 52:17B-4.4., and the implementing rules of this chapter.

(b) Waiver requests must be submitted to the Director in writing and include all documents supporting the applicant's request for a waiver.

(c) Absent a request for a waiver, the Director may waive the rules in this chapter if full compliance with the rules, or parts of the rules, would endanger the health, safety, and welfare of the officer, trooper, investigator, or the general public.

SUBCHAPTER 2. BODY ARMOR REPLACEMENT PROGRAM

13:80A-2.4 Application components

(a) A completed application for program funds shall include the following minimum information:

1. - 5. (No change.)

6. An online certification by the applicant agency head and the governing body's chief financial officer, certifying that the information contained in the application is true to the best of their knowledge and belief, and that all grant funds will be used exclusively for the purpose specified in the grant award;[and]

7. An online certification by the applicant agency head that the applicant agency has a mandatory wear policy; and

[7.] **8.** (No change in text.)

(b) (No change.)

SUBCHAPTER 3. PROGRAM GRANTS

13:80A-3.1 [Initial and successive program] **Program** grants

[Initial grants to eligible applicants shall be awarded at the conclusion of the State Fiscal Year 1998. Successive grants] **Grants** shall be awarded annually upon determination of available funds **and as a part of an application process.**

13:80A-3.4 Grant award process

(a) - (f) (No change.)

[(g) The rules of this chapter may be relaxed by the Attorney General under extraordinary

circumstances and as a matter of officer safety, to authorize the distribution of a portion of the Fund as special grant funds to assist eligible applicants in the premature replacement of body armor above their eligible applicants' annual replacement allotments. Extraordinary circumstances involve a Statewide distribution to eligible applicants when a model of body armor, that is in current use by eligible officers, and is potentially defective and where the eligible applicant can certify that it has insufficient funds to replace these vests. Based on the availability of special grant funds, each eligible applicant, within the time frames set forth by the Director, may apply for a special fund award.

1. The special grant award to an eligible applicant shall be determined using the following formula:

(eligible applicant's number of questioned body armor purchased that is in current use) divided by (approximate total number of eligible applicants' number of questioned body armor that is in current use) times (available special grant funds). Notwithstanding this formula, the eligible applicant's special grant award shall be limited to the actual replacement costs of the questioned body armor.

2. After each eligible agency is notified and given an opportunity to apply for a special grant within the time frames set forth by the Director, any money remaining in the special grant fund shall revert back into the Fund.]