

the proprietary interest in T is not preserved.
See paragraph (e)(2) of this section.

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Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: September 14, 1998.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 98-25444 Filed 9-22-98; 8:45 am]

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DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

28 CFR Part 33

[OJP(BJA)-1192]

RIN 1121-AA48

Bulletproof Vest Partnership Grant Act of 1998

AGENCY: Office of Justice Programs, Bureau of Justice Assistance (BJA), DOJ.

ACTION: Interim final rule.

SUMMARY: This part delineates the process by which the Bureau of Justice Assistance (BJA), Director, authorized by the Bulletproof Vest Partnership Grant Act of 1998 (Act), will provide armor vests to eligible States, units of local government, and Indian tribes for use by law enforcement officers. BJA will provide eligible applicants that participate in the program assistance in selecting and purchasing body armor vests. Specifically, BJA will provide information regarding the range of vests that have been tested by the National Institute of Justice (NIJ) and are found to meet or exceed the NIJ Standard 0101.03. Eligible applicants can then select vests from the list of NIJ-tested models found to meet or exceed the NIJ Standard 0101.03. BJA will pay up to 50% of the cost, either directly or indirectly through a third party, of the vests selected by eligible applicants. Eligible applicants will pay the remainder of the total cost. Total cost will include the cost of the armor vests, taxes, shipping, and handling. The manufacturer will send the vests directly to the eligible applicants that ordered them.

Information regarding all other application requirements of the program will be available in BJA's Bulletproof Vest Partnership Guidelines that will be completed when Congress has appropriated funds for this assistance program. Once compiled, the Guidelines will be available through the BJA Home Page at www.ojp.usdoj.gov/BJA and through the Department of Justice

Response Center at 1-800-421-6770. Until the Guidelines are available, interested parties are asked to check the above sources for updates on the status of this program.

DATES: This interim final rule is effective on September 23, 1998; comments on this rule must be received on or before November 23, 1998.

ADDRESSES: Comments should be sent to: Bulletproof Vest Partnership Program, Bureau of Justice Assistance, 810 Seventh Street NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: See the BJA Home Page at www.ojp.usdoj.gov/BJA or call the Department of Justice Response Center at 1-800-421-6770.

SUPPLEMENTARY INFORMATION:

Introduction

This interim final rule establishes the program by which BJA will implement The Bulletproof Vest Partnership Grant Act of 1998 (Act), 42 U.S.C. 3796ll; Pub. L. 105-181, June 16, 1998.

The Bulletproof Vest Partnership Grant Act of 1998

The purpose of this Act is to save lives and prevent injury of law enforcement officers by helping State, local, and tribal law enforcement agencies provide officers with armor vests. The Act is based on Congress' observations that the number of law enforcement officers who are killed in the line of duty would significantly decrease if every law enforcement officer in the United States had the protection of an armor vest.

Law enforcement officers consist of officers, agents, or employees of State, units of local government, or Indian tribes, authorized by law or by a government agency to engage in or supervise the prevention, detection, or investigation of any violation of criminal law, or authorized by law to supervise sentenced criminal offenders. BJA considers law enforcement officers to include those officers, agents, or employees of State, units of local government, or Indian tribes, authorized by law or by a government agency to supervise pre-sentenced and non-sentenced detainees.

The Justice Department estimates approximately 150,000 law enforcement officers in the United States, or nearly 25 percent, are not issued body armor. Studies conducted between 1985 and 1994 point out that over 700 officers in the United States were feloniously killed in the line of duty while bullet-resistant materials helped save the lives of more than 2,000 officers. The Federal

Bureau of Investigation (FBI) has estimated that the risk of fatality to officers not wearing armor vests is 14 times higher than for officers wearing them.

The Executive Committee for Indian Country Law Enforcement Improvements reports that violent crime in Indian country has risen sharply, despite a decrease in the national crime rate, constituting a public safety crisis in Indian country. Moreover, during 1995, there were approximately 13,000 assaults on state correctional officers, and about 1,100 assaults on Federal correctional officers, nationwide. Of those assaults, 14 resulted in fatalities. *See Census of State and Federal Correctional Facilities, 1995*, Stephan, James J., U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, August 1997, NCJ-164266.

This Act provides grants of armor vests to States, units of local government, and Indian tribes as a preventive measure to better ensure their safety as these officers implement violent crime prevention initiatives across the United States.

Armor Vests

Armor vests have been defined as body armor that meets or exceeds the requirements of National Institute of Justice (NIJ) Standard 0101.03: Ballistic Resistance of Police Body Armor. Law enforcement fatality statistics compiled by the FBI annually suggest that a large percentage of officer fatalities may have been prevented if the officers had been wearing body armor. Based on this observation, this Act reinforces the message to law enforcement administrators that they should make every effort to encourage their officers to wear appropriate body armor throughout each duty shift. Although designed primarily to protect against handgun assault, soft body armor has prevented serious and potentially fatal injuries from traffic accidents (both automobile and motorcycle), from physical assault with improvised clubs, and, to some extent, from knives. To facilitate the acquisition of appropriate body armor, the National Law Enforcement and Corrections Technology Center (Center) of the National Institute of Justice (NIJ) has identified models of body armor that have been tested and found to meet the NIJ Standard.

The NIJ Standard

The Standard classifies body armor into six different threat levels which, in order from lowest to highest level of protection, are Type I, Type II-A, Type

II, Type III-A, Type III, and Type IV. The Act requires compliance with at least a Type I vest which is the lowest or minimum level of protection that any officer should have. Type II-A armor provides protection from lower velocity .357 Magnum and 9mm ammunition and Type II armor provides protection from higher velocity .357 Magnum and 9mm ammunition. Type III-A armor provides the highest level of protection available in soft body armor and is suitable for routine wear in many situations; however, departments located in hot, humid climates may need to carefully evaluate the use of Type III-A armor.

Types III and IV armor clearly are intended for use only in tactical situations when the threat warrants such protection. The age of the vest, whether the vest is properly fitted, and whether the vest is actually worn are factors the Standard cannot test and are considered the responsibility of the applying jurisdiction.

Application of the Standard

Responsibility for selection of the appropriate armor vest for officers within a jurisdiction will be the responsibility of applicant jurisdictions. BJA will require that all purchased vests are among those tested and found to comply with the NIJ Standard.

Selection of Appropriate Armor

BJA will rely on NIJ expertise to provide applicants with information regarding how to select appropriate armor vests. Knowledge of contraband weapons in correctional facilities and of street weapons in local areas (confiscated weapons are a good indication) are essential considerations for selecting armor vests. It is also essential to consider service weapons used by officers as during the last decade one in six officers killed was shot with his or her own weapon. The fit of the vest for each officer also must be considered. Full coverage of the torso is critical to guard against bullets entering an officer's side through the opening between the front and rear vest panels.

Appropriation

Section 1001(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)) was amended to add an authorization of \$25,000,000 for each of the fiscal years 1999, 2000, and 2001 to carry out this Act. Funds will be available after the appropriation has been passed.

Executive Order 12866

This proposed regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Office of Justice Programs has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Initial Regulatory Flexibility Analysis

OJP has examined the impact of this interim final rule in light of Executive Order 12866 and the Regulatory Flexibility Act, 5 U.S.C. 603, *et seq.* Currently, OJP has identified over 1500 NIJ-tested vest models found to meet NIJ Standard 0101.03. These vest models are manufactured by approximately 60 manufacturers, including small and large businesses. OJP has identified over 39,000 units of government that would be eligible to apply for grants of vests under this program if they have employees meeting the definition of "law enforcement officer" within the meaning of the Act.

Chief Executive Officers (CEOs) of States, local units of government and Indian tribes will coordinate vest needs for law enforcement officers within a jurisdiction. CEOs will be given responsibility for opening purchase accounts through a clearinghouse operation managed by a designee of OJP. The clearinghouse will include a full-service support system for applicants and eligible vest manufacturers. After opening purchase accounts, applicants may access the shopping portion of the clearinghouse operation as often as necessary to negotiate and finalize vest orders with individual manufacturers. Through the full service system, eligible applicants may place one combined order annually, across multiple manufacturers. These orders may provide for up to one vest per officer per year. Once an individual vest order to a manufacturer has been received and

verified as complete by the applicant, payment of the Federal match of up to 50 percent of the total cost of the vest will be tendered to the manufacturer. The manufacturer will collect the remainder of payment directly from the applicant.

Section 2(b) of the Act makes clear that a major programmatic purpose of the Act is "to save lives of law enforcement officers by helping State, local, and tribal law enforcement agencies provide officers with armor vests." The Act states that "according to studies, between 1985 and 1994, bullet-resistant materials helped save the lives of more than 2,000 law enforcement officers in the United States," and during that same period, "709 law enforcement officers in the United States were feloniously killed in the line of duty." Sec. 2(a)(2), 2(a)(5). Moreover, Congress noted that "nearly 25 percent" of law enforcement officers across the United States "are not issued body armor." Sec. 2(a)(4), and that "the number of law enforcement officer * * * killed in the line of duty would significantly decrease if every law enforcement officer in the United States had the protection of an armor vest." Furthermore, "the Federal Bureau of Investigation estimates that the risk of fatality to law enforcement officers while not wearing an armor vest is 14 times higher than for officers wearing an armor vest." Sec. 2(a)(3).

OJP has considered alternatives to the system devised in this interim final rule for the grant of body armor vests for law enforcement officers, none of which would effectively or efficiently accomplish its programmatic objectives. For reasons of programmatic viability, manufacturers of NIJ-tested body armor vests will sell and deliver all vests directly to applicants. This process will not involve the multitude of intermediary product providers such as retailers, individual and corporate distributors, and mail order businesses. Only by requiring direct purchase and delivery of vests from manufacturers can OJP accommodate the need for wide-ranging customization requests, ensure quality control, encourage economic incentives and cost savings, and facilitate swift completion of transactions.

Because these statistics are cause for considerable and immediate concern, OJP has crafted a system to carry out the terms of the Act in an expeditious manner, yet retain programmatic viability. Quality control, timeliness in completing transactions, and economies of scale are all significant features of the system, would support the programmatic purpose, and would most

effectively address the concerns raised by these statistics. The manufacturers are best able to effectively handle large volume orders, a characteristic typical of larger law enforcement agencies, as well as orders coming from multiple agencies simultaneously.

Moreover, in many instances, single product pieces will require customizing to suit an individual's needs. Customization of individual pieces would best be handled directly by manufacturers. In addition, to ensure quality control, all vests provided must be tested subject to the NIJ Standard; manufacturers can best accommodate the sale of products in large volume that are required to be NIJ-tested, and can do so in a timely manner without involving additional entities. Furthermore, with regard to economies of scale, the order of vests directly from manufacturers may afford applicants significant savings on a cost per unit basis.

OJP recognizes that, because of the potentially diverse opinion in the small business community regarding the affect of this interim final rule, not all interested persons may have been fully represented prior to its publication. OJP is therefore requesting that comments be submitted to help insure that the concerns of all interested parties are considered. Comments should identify the type of business, including the number of individuals involved and the annual volume of business conducted, and how the regulatory requirements in this interim final rule would impact that business. Comments and suggestions may also be provided, within the statutory requirements, regarding how the final rule might be better tailored to the business without compromising the basic mandate of the law to provide for the grant of body armor vests for law enforcement officers.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in cost or prices; or significant adverse effects on

competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete in domestic and export markets.

Paperwork Reduction Act

The collection of information requirements contained in this regulation will be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Good Cause Exception

This regulation is being published as an interim final rule, without prior publication of notice and comment, and is made effective immediately, for good cause. Under 5 U.S.C. 553(a)(2), matters relating to grants are exempted from notice and comment requirements. Moreover, in this case, advance notice and comment would be impractical, unnecessary, and contrary to the public interest in the prompt implementation of the assistance program.

The Act requires that BJA must promulgate final implementing regulations within 90 days of the June 16, 1998 enactment of the Act. In order to comply with this requirement, these regulations must be made effective immediately so that eligible States can apply for grants of armor vests.

To publish a notice of proposed rulemaking and await receipt of comments would delay significantly the implementation of this assistance program. Such delay would be contrary to the public interest and would contradict the Congressional intent to provide immediate grants of armor vests, to eligible states, units of local government, and Indian tribes for use by law enforcement officers. However, BJA is extremely interested in receiving public comment on all aspects of this program, and will consider fully all such comments submitted on or before November 23, 1998, in preparing a final rule.

List of Subjects in 28 CFR Part 33

Administrative practice and procedure, Grants.

For the reasons set forth in the preamble, 28 CFR part 33 is amended as follows:

PART 33—BUREAU OF JUSTICE ASSISTANCE GRANT PROGRAMS

1. The Heading for part 33 is revised as set forth above.

2. The authority citation for part 31 is revised to read as follows:

Authority: Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, *et seq.*, as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415,

Pub. L. 94-430, and Pub. L. 94-503, Pub. L. 95-115, Pub. L. 96-157, and Pub. L. 98-473) (the Justice Assistance Act of 1984); Pub. L. 105-181, 112 Stat. 512, 42 U.S.C. 3796ll.

3. The designations "Subpart A through Subpart I" are removed and the headings remain as undesignated center headings.

§§ 33.1 through 33.80 and undesignated center headings [Designated as Subpart A]

4. Sections 33.1 through 33.80, and the undesignated center headings, are designated as subpart A and a new subpart heading is added to read as follows:

Subpart A—Criminal Justice Block Grants

§ 33.1 [Amended]

5. Section 33.1 is amended by revising "This part" to read as follows: "This subpart"

§ 33.3 [Amended]

6. Section 33.3 is amended by revising "this part 33" to read as follows: "this subpart A"

7. Section 33.40 is amended by revising "This subpart sets" to read as follows: "Sections 33.40 and 33.41 set."

8. Part 33 is further amended by adding the following new subpart B to read as follows:

Subpart B—Bulletproof Vest Partnership Grant Program Applying for the Program

Sec.

33.100 Definitions.

33.101 Standards and requirements.

33.102 Preferences.

33.103 How to apply.

Subpart B—Bulletproof Vest Partnership Grant Program Applying for the Program

§ 33.100 Definitions.

The Bureau of Justice Assistance (BJA) will use the following definitions in providing guidance to your jurisdiction regarding the purchase of armor vests under the Bulletproof Vest Partnership Grant Act of 1998—

(a) The term *program* will refer to the activities administered by BJA to implement the Bulletproof Vest Partnership Grant Act of 1998;

(b) The terms *you* and *your* will refer to a jurisdiction applying to this program;

(c) The term *armor vest* under this program will mean a vest that has met the performance standards established by the National Law Enforcement and Corrections Technology Center of the National Institute of Justice (NIJ) as

published in NIJ Standard 0101.03, or any formal revision of this standard;

(d) The term *State* will be used to mean each of the 50 States, as well as the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands;

(e) The term *unit of local government* will mean a county, municipality, town, township, village, parish, borough, or other unit of general government below the State level;

(f) The term *Indian tribe* has the same meaning as in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) which defines Indian tribe as meaning any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) (43 U.S.C. 1601 *et seq.*);

(g) The term *law enforcement officer* will mean any officer, agent, or employee of a State, unit of local government, or Indian tribe authorized by law or by a government agency to engage in or supervise the prevention, detection, or investigation of any violation of criminal law, or authorized by law to supervise sentenced criminal offenders; and

(h) The term *mandatory wear policy* will mean a policy formally adopted by a jurisdiction that requires a law enforcement officer to wear an armor vest throughout each duty shift whenever feasible.

§ 33.101 Standards and requirements.

This program has been developed to assist your jurisdiction with selecting and obtaining high quality armor vests in the quickest and easiest manner available. The program will assist your jurisdiction in determining which type of armor vest will best suit your jurisdiction's needs, and will ensure that each armor vest obtained through this program meets the NIJ standard.

(a) Your jurisdiction will be provided with model numbers for armor vests that meet the NIJ Standard in order to ensure your jurisdiction receives the approved vests in the quickest manner;

(b) If you are a State or unit of local government, your jurisdiction will be required to partner with the Federal government in this program by paying at least 50 percent of the total cost for each armor vest purchased under this program. These matching funds may not be obtained from another Federal source;

(c) If you are an Indian tribe, your jurisdiction will be required to partner with the Federal government in this program by paying at least 50 percent of the total cost for each armor vest purchased under this program. Total cost will include the cost of the armor vests, taxes, shipping, and handling. You may use any funds appropriated by Congress toward the performing of law enforcement functions on your lands as matching funds for this program or any funds appropriated by Congress for the activities of any agency of your tribal government;

(d) BJA will conduct outreach to ensure that at least half of all funds available for armor vest purchases be given to units of local government with fewer than 100,000 residents;

(e) Each State government is responsible for coordinating the needs of law enforcement officers across agencies within its own jurisdiction and making one application per fiscal year;

(f) Each unit of local government and Indian tribe is responsible for coordinating the needs of law enforcement officers across agencies within its own jurisdiction and making one application per fiscal year;

(g) Your individual jurisdiction may not receive more than 5 percent of the total program funds in any fiscal year;

(h) The 50 States, the District of Columbia, and the Commonwealth of Puerto Rico, together with their units of local government, each may not receive less than one half percent and not more than 20 percent of the total program funds during a fiscal year;

(i) The United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands, together with their units of local government, each may not receive less than one fourth percent and not more than 20 percent of the total program funds during a fiscal year; and

(j) If your jurisdiction also is applying for a Local Law Enforcement Block Grant (LLEBG), then you will be asked to certify:

(1) Whether LLEBG funds will be used to purchase vests; and, if not,

(2) Whether your jurisdiction considered using LLEBG funds to purchase vests, but has concluded it will not use its LLEBG funds in that manner.

§ 33.102 Preferences.

BJA may give preferential consideration, at its discretion, to an application from a jurisdiction that—

(a) Has the greatest need for armor vests based on the percentage of law enforcement officers who do not have access to an armor vest;

(b) Has, or will institute, a mandatory wear policy that requires on-duty law enforcement officers to wear armor vests whenever feasible; and

(c) Has a violent crime rate at or above the national average as determined by the Federal Bureau of Investigation; or

(d) Has not received a Local Law Enforcement Block Grant.

§ 33.103 How to apply.

BJA will issue Guidelines regarding the process to follow in applying to the program for grants of armor vests.

Dated: September 16, 1998.

Richard H. Ward, III,

Acting Director, Bureau of Justice Assistance.

[FR Doc. 98-25336 Filed 9-22-98; 8:45 am]

BILLING CODE 4410-18-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK10-1-7022a; FRL-6162-9]

Approval and Promulgation of Implementation Plans: Alaska

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) is approving a revision to the mobile source portion of the 1990 Base Year carbon monoxide(CO) emission inventory of the Anchorage and Fairbanks, Alaska, State CO Implementation Plan. The previous inventory used the MOBILE 4.1 model; the revised inventory estimates use a newer version of the model, MOBILE 5.0a.

DATES: This direct final rule is effective on November 23, 1998 without further notice, unless EPA receives adverse comment by October 23, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to: Montel Livingston (OAQ-107), Environmental Protection Specialist, Office of Air Quality, EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal