

Document 1

Testimony of Helen Bassett, Rules and Legislation Coordinator Department of Public Safety Driver and Vehicle Services

Motorcycle Road Guard Public Hearing December 18, 2013 OAH-8-2400-22867 ~ Revisor No. RD-4088

Introduction

The Department of Public Safety appreciates this opportunity to share information about the Motorcycle Road Guard Program, and the important ways that these proposed rules will aid the Department's efforts to increase safety for motorcycle riders who engage in group-ride activities, for sport, charity, and recreational purposes. The classroom, and practical training, offered through the program, will benefit Minnesota Motorcyclists and the public in general.

It is my intention to move through my comments at a pace that provides the most opportunity for the public to share their thoughts and for your honor's deliberations. At any point during my presentation that there is a question, I would be pleased to provide more information. The panel of witnesses here today is also available to assist, and therefore my comments, initially will be relatively brief. My substantive comments today are from the Statement of Reasonableness and Need (SONAR), which we may refer to in this presentation as the SONAR, filed by the Department as part of the rulemaking record.

Data in the 2012 Minnesota Vehicle Crash Facts, published by the Department of Public Safety Office of Traffic Safety, reported a 31% increase in motorcycle fatalities for 2011. As we state in the SONAR, The Office of Traffic Safety (OTS) works to reduce the number of deaths and serious injuries caused by traffic accidents. OTS administers federal and state funding to support programs that "encourage responsible driving behavior, enforce traffic laws, and to inform and educate the public."¹

The Minnesota Motorcycle Safety Program is part of the OTS division, and is authorized to operate the Minnesota Motorcycle Safety Center (MMSA), and works to prevent motorcycle crashes, fatalities and injuries by providing high-quality rider education, training and licensing.² More data is available in the SONAR, provided in the record, as Exhibit D.

¹ Minnesota Department of Public Safety, Office of Traffic Safety. (2012). *2012 Minnesota Motor Vehicle Crash Facts*. Produced by Minnesota Department of Public Safety. St. Paul, MN

² *Id.* Retrieved August 26, 2013. <https://dps.mn.gov/divisions/ots/mmsc/about/Pages/default.aspx>.

Statutory Authority

Minnesota Statutes, Chapter 171 authorizes the Minnesota Department of Public Safety (DPS) Driver and Vehicle Services Division (DVS), to regulate the licensure and driving privilege of individuals who operate vehicles, including motorcycles, on Minnesota roads. Chapter 171.60 further authorizes DPS to regulate the Motorcycle Road Guard Certificate program. In this proceeding rulemaking, DPS proposes to promulgate a new rule chapter governing the administrative, safety and equipment and program curriculum requirements and certification qualifications for the Motorcycle Road Guard Program (MRGP). Minnesota Statutes, section 171.60, subdivision 5, 3, section 27, and 43, authorize the Commissioner of Public Safety to adopt rules to govern the Motorcycle Road Guard Program, we describe herein as new chapter, 7422.³

Process

On June 25, 2012, DPS published a Request for Comments on possible new rules governing Motorcycle Road Guard certification and qualification requirements in the *State Register*. Interested parties and stakeholders received the Notice of Intent to Adopt Rules, (NIAR) via US Mail and electronic email on June 19. The NIAR was also on the Department's Driver and Vehicle Services website.⁴ The Request described the need for proposed rules and rule amendments, the persons affected by the proposed rule, and the statutory authority for the rulemaking. Additional names of stakeholders interested in the program were identified, and the information was submitted to and approved through the Additional Notice Plan list provisions of the Office of Administrative Hearing (OAH). Under this plan, over 550 individuals and organizations received notice of the rulemaking process and timelines.

The same Notice advised everyone that there would be another opportunity for comment during the Notice of Intent to Adopt Rules (NIAR) comment period, which would come later. Copies of the Request for Comments were mailed to persons who wished to receive notice of DPS' rulemaking, in compliance with Minnesota Statutes, Section 14.14. In an effort to gather broad public input, the Department established a citizen's advisory committee to assist in the rule development phase of the process.

³ Laws, 2012, chapter 287, article 3, sections 27, and 43.

⁴ Minnesota Department of Public Safety website: [https://dps.mn.gov/Pages/Results.aspx?k=motorcycle% 20 road%20guardpublicNotices.htm](https://dps.mn.gov/Pages/Results.aspx?k=motorcycle%20road%20guardpublicNotices.htm)) The Department launched a new website on June 1, 2011 with a new web address. Accordingly, all web/url links were changed.

Four Advisory Committee meetings took place from September 2012 through February 2013. Meeting notices and agendas were posted on the DVS Rules section of the DPS website, along with each new draft of the proposed rule; and, a direct link to the DVS Rules Coordinator was provided to enable the public and interested stakeholders to submit comments regarding the posted proposed rules.

Regulatory Analysis

Under Minnesota Statutes, sections 14.002, and 14.131, the Department must weigh certain factors in determining the need for and reasonableness of the proposed new rule. Each factor is addressed in turn here.

1. Persons Affected (Minn. Stat. § 14.131(1))

The Department identified “classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.” Minn. Stat. § 14.131(1) (2010).

Minnesota Laws, 2012, Chapter 43, art 3, s 43, subdivision 3, directs the commissioner of public safety to assess a fee for each applicant for a motorcycle road guard certificate, calculated to cover the cost of establishing and administering the program. Administration of the proposed program by the commissioner includes managing the certification and bi-annual re-certification process for motorcycle road guard certificate-holders; and the establishment of certification qualifications and standards. Department panelists who are available to give testimony at this Administrative Hearing will discuss further testimony about the costs of administering the program and participation costs.

Classes of persons affected include entities comprised of motorcycle enthusiasts, individuals interested in holding road guard certification, entities providing instructional staff, and materials. DPS internal program managers were consulted to aid identification of interested persons to receive notices of DPS’ plans to propose rules for the motorcycle road guard certificate program.

2. Probable Costs/Effect on State Revenues (Minn. Stat. § 14.131(2))

The costs of training are not completely calculated, and it is too early to determine how many motorcyclists will apply to become certified as instructors or as motorcycle road guard certificate holders.

Neither the Department nor any other agency is likely to incur additional implementation or enforcement costs if the proposed rule is adopted. Motorcycle Road Guard certificate holders will be required to complete the course and renew their certification at specific intervals. There is no automatic renewal of a road guard certificate. The Department expects to be able to handle the certification process without adjusting staffing levels and without incurring extraordinary costs.

The proposed rule would have some limited effect on state revenues, because of the proposed fee imposed to establish and administer the program. It is anticipated that the application fees generated from applicants will cover the costs for administration. Operation costs are minimal and are calculated by staff time needed to establish and later to administer the program.

3. Less Costly or Intrusive Methods (Minn. Stat. § 14.131(3))

The Department has considered whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule. The Department has concluded that there are no such methods because the rule's purpose is to implement policy that is adopted by the Minnesota legislature.

4. Alternative Methods Considered (Minn. Stat. § 14.131(4))

The Minnesota Administrative Procedure Act requires DPS to describe any alternative methods that it seriously considered for achieving the purpose of the proposed rule and the reasons why those alternatives were rejected. *See* Minn. Stat. § 14.131(4) (2010). In DPS' view, however, there is no alternative method of achieving the rule's purpose. DPS considered alternatives to managing the traffic control at intersections and determined that the requirements under existing statutes would provide solid parameters upon which to address traffic, given the limited control duties of a motorcycle road guard. Existing rules restricting alcohol consumption, and motorcycle operator endorsement training provided an important context for the proposed rule, suggesting the best methods for implementation.

5. Probable Costs of Compliance (Minn. Stat. § 14.131(5))

The Department has analyzed “the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals,” Minn. Stat. § 14.131(5) (2010). It has concluded that the proposed amendment has no effect on the costs of compliance. A motorcycle road guard, using a motorcycle is required by Minn. Stat. § 169.974., Subdivision 2, item (a), to hold a valid motorcycle permit or motorcycle endorsement and therefore, the costs for motorcycle endorsement would not represent new costs to a road guard. There may be costs associated with the purchase of safety equipment, such as vests and flagging equipment.

In addition, there is a cost for the classes required for certification, but these costs are nominal and assumed to be very limited. There are no appreciable new costs associated with the operation of a motorcycle by the road guard. Liability insurance coverage is required under the proposed rule; however, the costs for coverage will be borne by the entity sponsoring the event. Local government officials and law enforcement of cities of the first class are able to review and approve the route of the motorcycle group ride through their cities and have the option of allowing the group ride, which will free up officers not needed to control intersections if road guards provide the traffic control duties for the group ride. See Exhibit 3 for specific data on estimated costs for training and equipment.

6. Probable Costs or Consequences of Non-Adoption (Minn. Stat. § 14.131(6))

Under the Administrative Procedure Act, DPS must consider “the probable costs or consequences of not adopting the proposed rules, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.” Minn. Stat. § 14.131(6) (2010). The high costs associated with motorcycle-related vehicle crashes that result in damage to property and potential loss of life represent significant costs including the loss of productivity because of injury, or the loss of income to the family of a loved one can be dramatic. In addition, traffic delays and confusion at intersections in cities where group rides occur can negatively affect cities and increase crash potential.

List of Witnesses

1. Ms. Patricia McCormack, Director, Driver and Vehicle Services Director, DPS
2. Ms. Debra Carlson, Driver Exam Program Manager, Department of Public Safety (DPS)
3. William Shaffer, Office of Traffic Safety (OTS) Minnesota Motorcycle Safety Center, DPS
4. Helen Bassett, Driver and Vehicle Services, Rules and Legislation Coordinator
5. Major Nancy Silkey, State Patrol, Department of Public Safety
6. Lt. Zak, Minnesota State Patrol
7. Ken Johnson, Traffic Engineering, Minnesota Department of Transportation (MNDOT)
8. Joseph Newton, DPS Legal Counsel

LIST OF EXHIBITS

The Exhibits are provided on the DVS website, therefore I will move directly to discuss the reasonableness of the rules proposed. Each rule part is discussed in detail in the SONAR, and provided in Exhibit D. Comments today will not include a detailed statement of each rule part or subpart. This testimony is meant to affirm the need for each rule part.

Rule Analysis

Minnesota Statutes, Chapter 14, requires the Department to explain the facts establishing the need and reasonableness of the rules as proposed. “Need” means that a problem exists which requires administrative attention. “Reasonableness” means that there is a rational basis for the Department’s proposed action. The need for and reasonableness of proposed Minnesota Rules parts 7422.0100, 7422.0200, 7422.0300, 7422.0400, 7422.0500, 7422.0600, 7422.0700, 7422.0800, 7422.0900, 7422.1000, 7422.1100, 7422.1200, 7422.1300 and proposed new chapter 7422, follows. Each of the definitions under Part 7422.0100 are restated to affirm the Department’s statement of need and the reasonableness of these definitions.

DEFINITIONS

7422.0100 Definitions.

The definitions which are provided in Subpart 1 – Subpart 16 are necessary to generally ensure that common language and understanding of terms is provided for classes of persons affected or interested in the motorcycle road guard certificate program.

In addition, the definitions are needed to ensure consistency between agencies charged with administering, implementing, and regulating the activities proposed.

Subpart 1 Scope.

The motorcycle road guard certificate program is a new program and requires coordination between several divisions within the Department of Public Safety (DPS), including: Driver and Vehicle Services (DVS), State Patrol, the Office of Traffic Safety (OTS), and the Minnesota Motorcycle Safety Center (MMSA) a program administered by the OTS. An additional state agency, the Department of Transportation, will also be involved in delivering training related to the traffic control aspects of the program. Defining the scope insures that each agency has clarity regarding their role and authority under the proposed new chapter 7422.

Subp. 2. Applicant.

This subpart is necessary because it clarifies how to identify program participants and draws a distinction between road guard certificate instructors and individuals who make application to enroll in the motorcycle road guard program; it is a reasonable and straightforward means by which applicants can also define themselves.

Subp. 3. Commissioner.

This subpart is necessary to identify the Commissioner of the Department of Public Safety as authorized to carry out the provisions of this new proposed rule. The subpart also clarifies that the motorcycle road guard certification process and the issuance of certificates to applicants who meet all provisions in the proposed new rule chapter 7422, are authorized by the Commissioner of the Department of Public Safety. Further, all motorcycle road guard program officials are agents authorized to act, by and through the authority of the Commissioner of the Department of Public Safety.

Subp. 4. Disqualification or disqualify.

This subpart is necessary to provide clear notice to program applicants that the Commissioner of the Department of Public Safety has the authority to disqualify a certificate holder, if provisions of the statutory requirements under proposed new rule chapter 7422 are not met. The subpart describes the meaning of disqualification of a motorcycle road guard certificate, and it specifies that the certificate becomes void upon the action of the commissioner of public safety, or if the designated agent of the commissioner “disqualifies” or rescinds a person’s motorcycle road guard certificate.

Subpart 5. Daytime.

The definition has the same meaning as set forth in under Minnesota Statutes, section 169.011, subdivision 22, and is necessary to ensure consistent application of terms and provides law enforcement officials, program training staff, and motorcycle certificate holders with clear and common understanding of the terms. It is reasonable as it ensures consistency between applicable motor driver and vehicle rules.

Subpart 6. Entity.

The definition of “entity” has the same meaning given in Minnesota Statutes, section 12.03, subdivision 4e. This definition is necessary to ensure clear and common understanding of the terms used in the applicable rules. A major function of a motorcycle road guard is to perform escort services for “group rides.” Group rides may be organized and sponsored by a wide variety of types of clubs, organizations or charitable events. This rule is reasonable and necessary to ensure that all types of organizations are accommodated within the rule, and enhances the ease of application for administering the motorcycle road guard program.

Subpart 7. Instructor Applicant.

The term “Instructor Applicant” provides clarification and differentiation between an individual who is an applicant for applying for enrollment into the motorcycle road guard certificate course, and a motorcycle road guard who is also designated by the DPS to function as an instructor for the road guard program. This rule is reasonable and necessary to ensure clarity related to roles within the classroom training and among program applicant types.

Subpart 8. Minnesota motorcycle safety center.

The Minnesota Motorcycle Safety Center (MMSC) is a program authorized by Minnesota Statutes, Section 121A.36. Providing this definition creates a common understanding and recognition of the statutorily directed functions, general roles, and scope of the “Minnesota Motorcycle Safety Center” and incorporates the coordination duties of the MMSC for oversight of the motorcycle road guard training program and for motorcycle road guard applicants and instructors.

Subpart 9. Motorcycle road guard.

The designation of the title “motorcycle road guard” refers to a person who has fulfilled the requirements necessary to become certified as a motorcycle road guard, as

provided by Minnesota Statutes, section 171.60, Subdivision 1-4, and incorporates requirements and duties of Minnesota Statutes Chapter 169.06, subdivision 4, item (g) when the motorcycle road guard is certified and the certificate is issued by the commissioner. This definition is necessary because it clarifies that the holder of a motorcycle road guard certificate has met and must continue to meet and complete each aspect of the training before a certificate is conferred and considered valid.

Subpart 10. Motorcycle road guard certification course.

This subpart clarifies that a program offering a “motorcycle road guard certification course” must be authorized by the commissioner for the instruction and certification of a motorcycle road guard. This rule is necessary because it clarifies who may provide the training for a motorcycle road guard, and it sets the parameters for the curriculum and content of the course.

Subpart 11. Motorcycle road guard instructor.

A “motorcycle road guard instructor” must be approved and authorized by DPS to function as an instructor for the motorcycle road guard program. This rule is necessary and reasonable to set a standard for training of motorcycle road guards and ensures access to a highly trained subset of motorcycle training instructors, through a consistent and tested resource, without greatly increasing costs, and maintaining maximum resource efficiency.

Subpart 12. Qualified prior impaired driving incident.

This definition has the same meaning as provided in Minnesota Statutes, Chapter 169A.03, subdivision 22, and clarifies the extent to which and the scope of how prior impaired driver convictions and prior impaired driving-related convictions will factor in the motorcycle road guard certification program.

Subpart 13. Valid motorcycle road guard certificate.

The motorcycle road guard certificate provides the certified documentation that an enrollee in the motorcycle road guard certificate program has met all of the requirements under proposed rule 7422.0200 and certification has not expired, nor been disqualified. It is issued by the commissioner, and the certificate means that the prescribed curriculum has been completed and that the issuance of a certificate is currently valid and has not been disqualified by the commissioner of public safety.

Subpart 14. Wireless communications device.

A wireless communications device has the same meaning as provided in Minnesota Statutes 169.011, subdivision. 94; and it is also defined in Minnesota Statutes, Section 169.11, subdivision 15 to mean a cellular phone or portable electronic device whether analog, wireless or digital that is capable of sending and receiving data without an access line for serve, to enable and ensure communication with law enforcement as required so that a motorcycle road guard can carry out escort duties on a group ride. This rule is reasonable and necessary for a motorcycle road guard to carry out their escort duties and enables communication of a routine or emergency nature between a motorcycle road guard and road authorities along the group ride route or law enforcement as needed.

Subpart 15. Motorcycle Road Guard Field Guide

This Field Guide is necessary and reasonable since it provides a motorcycle road guard with an easy-to-use reference guide developed specifically for the purpose of supporting the motorcycle road guide certificate program. It encompasses data approved by DPS and developed for use in the field in cooperation with State Patrol, MNDOT, and the OTS, through the Minnesota Motorcycle Safety Center.

Subpart 16. ANSI 1007-2004 standard.

The International Safety Equipment Association (ISEA) develops the standard for the design and performance of high visibility safety apparel; and the standards are published by the National Standards Institute, (ANSI). A motorcycle road guard performing duties under proposed new chapter 7422 must comply with the safety apparel specifications described in proposed rule 7422.1100, subparts 1-3, which establishes standards for the design and performance of high visibility safety apparel and equipment. This rule is necessary and reasonable to inform applicants and the public of the safety equipment and apparel requirements for motorcycle road guards certified under proposed new chapter 7422.

ADMINISTRATIVE REQUIREMENTS

Given that the SONAR addresses requirements in detail, my comments will not discuss each of the parts or subparts listed below. The Rule Parts are included for ease of reference. Specific statements by DPS panelists will address comments or concerns

raided during the public hearing. Interested parties are again encouraged to review Exhibit D, which is the full statement of need and reasonableness.

PART 7422.0200. Motorcycle Road Guard; Authority; Restrictions.

Subp. 3. Restrictions.

Subp. 4. Requirement to produce proof of insurance

Part 7422.0300 Motorcycle Road Guard Certificate; Qualifications.

Part 7422.0400 Motorcycle Road Guard Instructor Qualifications.

Part 7422.0700 Course Instruction Frequency.

PART 7422.0800 DATA CLASSIFICATION; USE OF INFORMATION.

Subpart 1. Data classified.

Subp. 2 Required list.

PART 7422.0900 COURSE FEE.

SAFETY AND EQUIPMENT REQUIREMENTS

PART 7422.1000 VEHICLE REQUIREMENTS; RESTRICTIONS.

PART 7422.1100 ROAD GUARD FLAGGING EQUIPMENT; APPAREL REQUIREMENTS.

Subpart 1. Flagging equipment.

Subp. 2. Required high-visibility safety apparel.

Subp. 3 ANSI/ISEA 107 -2004 requirement.

PROGRAM CURRICULUM

**PART 7422.1200 MOTORCYCLE ROAD GUARD CERTIFICATE PROGRAM;
CURRICULUM.**

Subpart 1.

Subp. 2

Summary

The Department believes that each Part and Subpart of the proposed rules is reasonable and justified. Witnesses listed in the SONAR have provided additional statements, which we submit along with this testimony.