

# MINNESOTA DEPARTMENT OF PUBLIC SAFETY



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## Driver and Vehicle Services

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December 9, 2013

Legislative Reference Library  
645 State Office Building  
100 Constitution Avenue  
St. Paul, Minnesota 55155

Re: In The Matter of the Proposed Permanent Rules of the Department of  
Motorcycle Road Guard Relating to Motorcycle Road Guard Minnesota Rules,  
Part 7422.0100 – 7422.1300; Revisor's ID Number 4088

Dear Librarian:

The Minnesota Department of Department of Public Safety Diver and Vehicle Services (DPS/DVS) intends to adopt rules governing Motorcycle Road Guard Certification, Qualification and Requirements. We plan to publish a Dual Notice of Intent to Adopt Rules without a Public Hearing in the November 4, 2013 State Register.

The Department has prepared a Statement of Need and Reasonableness (SONAR). As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules. Our office transmitted an electronic copy of the SONAR to your office on October 24, 2013. Please accept this letter, which verifies the sending of the electronic notice.

If you have questions, please contact me at 651-201-7583.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Helen J.M. Bassett".

Helen J.M. Bassett  
DVS, Rules and Legislation Coordinator

**Minnesota Department of Public Safety**

**CERTIFICATE OF MAILING THE STATEMENT OF NEED AND REASONABLENESS  
TO THE LEGISLATIVE REFERENCE LIBRARY**

**Proposed Rules Governing Motorcycle Road Guard Certificate, Minnesota Rules, 171.60;  
RD4088**

[Note: the date of this certificate should be the same as or earlier than the date you mail the Notice of Intent to Adopt Rules.]

I certify that on October 24, 2013, when the Statement of Need and Reasonableness became available to the public, I submitted an electronic copy of the Statement to the Legislative Reference Library via email to [sonar@lrl.leg.mn](mailto:sonar@lrl.leg.mn). I mailed this copy to comply with Minnesota Statutes, sections 14.131 and 14.23.

Helen J.M. Bassett  
DVS Rules and Legislation Coordinator

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# Minnesota Department of Public Safety



## STATEMENT OF NEED AND REASONABLENESS

**Proposed New Rules Governing Motorcycle Road Guard  
Certificate Program Administrative Requirements, Safety and  
Equipment Requirements,  
and Program Curriculum**

**Part 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 Proposed Chapter 7422**

August 28, 2013

**NOTICE:** Upon request, the Department can provide this Statement of Need and Reasonableness in an alternative format such as large print, Braille, or other electronic media format. Requests should be directed to Helen J. M. Bassett at the Minnesota Department of Public Safety, Driver and Vehicle Services, 445 Minnesota Street, Suite 195, Saint Paul, Minnesota 55101-5195; 651-201-7583 (telephone); [DVS.Rules@state.mn.us](mailto:DVS.Rules@state.mn.us) (e-mail). TTY users may call the Department at 651-282-6555.

## INTRODUCTION

Pursuant to chapter 171 of Minnesota Statutes, the Minnesota Department of Public Safety (DPS), through its Driver and Vehicle Services Division (DVS), regulates the licensure and driving privilege of individuals who operate vehicles, including motorcycles, on Minnesota roads. DPS is also authorized by this chapter to regulate the Motorcycle Road Guard 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, which are described herein as new chapter, 7422.<sup>1</sup>

The motorcycle road guard certificate program will aid DPS' efforts to increase safety for motorcycle riders and their passengers who engage in group ride activities, for sport, charity, and recreational purposes. The classroom and practical training, offered through the motorcycle road guard program, will benefit Minnesota Motorcyclists and the general public.

### **Context and Purpose**

Motorcycle crash data for 2012, compiled by DPS, show a 31% increase in motorcycle fatalities over 2011.<sup>2</sup> Worrisome issues about safety rise as the number of fatalities and motorcyclist's increases. DPS reported "over 230,000 registered motorcycles and more than 400,000 licensed operators."<sup>3</sup> Alcohol use, accident severity, helmet use and operator training are all critical factors in examining issues and trends related to motorcycle driver and passenger safety. In Minnesota, there were 55 motorcycle-related deaths reported during 2012.

The Office of Traffic Safety (OTS) Division of DPS 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."<sup>4</sup> The Minnesota Motorcycle Safety Program is part of the OTS division, and is authorized to operate the Minnesota Motorcycle Safety Center (MMSC), and works to prevent motorcycle crashes, fatalities and injuries by providing high-quality rider education, training and licensing.<sup>5</sup> According to the officials at the OTS, "the leading crash factors each year for rider deaths are rider error, alcohol use, and motorist's failure to yield."<sup>6</sup>

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<sup>1</sup> Laws, 2012, chapter 287, article 3, sections 27, and 43.

<sup>2</sup> 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

<sup>3</sup> Minnesota Department of Public Safety. News release. (September, 20, 2012) *Motorcycle Deaths Continue to Spike in 2012*. Retrieved August 14, 2013. <https://dps.mn.gov/divisions/ooc/news-releases/Pages/Motorcyclist-Deaths-Continue-to-Spike-in-2012.aspx>.

<sup>4</sup> Department of Public Safety, Office of Traffic Safety About the office of traffic safety. (nd). Retrieved August 26, 2013. [http:// https://dps.mn.gov/divisions/ots/about/Pages/default.aspx](http://https://dps.mn.gov/divisions/ots/about/Pages/default.aspx).

<sup>5</sup> *Id.* Retrieved August 26, 2013. [http:// https://dps.mn.gov/divisions/ots/mmssc/about/Pages/default.aspx](http://https://dps.mn.gov/divisions/ots/mmssc/about/Pages/default.aspx).

<sup>6</sup> Kaufenberg, S., (2012). *Motorcycle deaths continue to spike in 2012*. News Release. Minnesota Department of Public Safety. Retrieved from website: <https://dps.mn.gov/divisions/ooc/news-releases/Pages/Motorcyclist-Deaths-Continue-to-Spike-in-2012.aspx>

Data from the “2012 *Fatal Motorcycle Crash Facts* report that 46% of the motorcyclists killed were over the age of 50; 31 percent were under 30.”<sup>7</sup> OTS also reports that along with the “newly endorsed younger drivers each year, a large number of middle-aged people are returning to motorcycling. The crash data indicates that proper operator training is required. Data from 2012 indicates that one out of every five motorcycle operators that were involved in a fatal crash did not have a valid endorsement to drive a motorcycle.”<sup>8</sup>

DPS, through the MMSC, works closely with motorcyclists, motorcycle clubs and associations and law enforcement to provide data designed to increase operator safety. Legislative hearings on the motorcycle road guard certificate program, included representation from rider organizations. In fact, members of American Bikers for Awareness, Training, and Education (ABATE) of Minnesota testified in favor of the motorcycle road guard certificate program legislation during the legislative hearing. Law enforcement officials have also been included in discussions and planning for the motorcycle road guard program.

Testimony by the Minnesota Chiefs of Police raised important questions regarding how cities of the first class and smaller cities might be impacted by the high volume of traffic generated by large motorcycle group rides, especially during the peak tourism season. Motorcycle road guard’s primary function is to escort a group of riders and to function as a flagger who stops and controls traffic during intersections for the group to travel safely and other motorists as well. Proposed Chapter 7422 will provide rules to insure that a motorcycle road guard and organizers of group rides will file route plans. The plans will provide advance notice of the group ride route to road authority officials and provide for liability coverage.

The MMSC publishes data about motorcycle crashes, in various reports and other resource materials. MMSC’s, *Sharing the Road* pamphlet reports that the majority of car-motorcycle crashes occur at intersections.<sup>9</sup> The signaling equipment of motorcycles differs from automobiles, and thus can confuse motorists and increase the incidence of accidents. The time it takes for a group of motorcyclists to pass through a given intersection will depend upon the intersection configuration, the type of roadway or highway, and the skill of the escort accompanying the group and responsible for the signaling associated with escort duties. Motorcycle road guards will be responsible for escorting a minimum of 20 motorcyclists. This number of riders could also be higher than 20, and include as many as 150 riders.

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<sup>7</sup> Kaufenberg, S. (2013). 2013 Motorcycle fatalities pass 25-death milestone. News Release. Minnesota Department of Public Safety. Retrieved 8/14/2013. <https://dps.mn.gov/divisions/ooc/news-releases/Pages/2013-Motorcyclist-Fatalities-Pass-25-Death-Milestone.aspx>

<sup>8</sup> Minnesota Department of Public Safety (2013) 2012 Minnesota motor vehicle crash facts. Office to Traffic Safety. St. Paul, MN. (p. 60).

<sup>9</sup> Minnesota Department of Public Safety. *Sharing the Road: A guide for motorists and motorcyclists*. (nd). Office of Communications. St. Paul, MN.

According to a study by the *National Highway Traffic Safety Administration*, “riders in focus groups expressed a range of riding preferences...the majority felt that there was a limit to how big a group ride could be and still operate safely. However, there were different opinions as to how big that group should be.”<sup>10</sup> Individual motorcycle operators, participating in group rides as motorcycle road guards would adhere to rules establishing the minimum number of cyclists required for a group ride. Rules become increasingly important as more and more people become motorcycle enthusiasts. Increases in the number of motorcyclists have occurred steadily over the last several years. In 2012, DPS data showed that “almost 57 billion miles driven in Minnesota”<sup>11</sup> of all vehicle types. According to DPS, “there were 69,236 traffic crashes reported to Public Safety in 2012, a decrease of 4% from 2011.”<sup>12</sup> However, there was a 7.3% increase in deaths over the previous year. DPS’ efforts to increase safety for Minnesota motorists have made a difference, with a discernible decrease in overall crashes.

DPS data shows that the number of motorcycle operators and the number of registered motorcycles has reached a historical high. DPS reports that “in 2012 there were 1,563 crashes that involved at least one motorcycle ... a 19% increase over the previous year. ... and 57% of all motorcyclists killed or injured in 2012 were to people aged 40 and over.”<sup>13</sup> When one adds the complexity of moving large groups of motorcyclists through varied traffic conditions, safety issues quickly become a concern.

## 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*. Notices of Intent to Adopt Rules were also sent to interested parties, by US Mail and electronic email on June 19, and posted a copy of the Request for Comments Notice on the Department’s Driver and Vehicle Services website.<sup>14</sup> 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.

Copies of the Request for Comments were mailed to persons who requested to receive notification of DPS’ rulemaking, in compliance with Minnesota Statutes, section 14.14. The process enabled DPS to identify persons likely affected by the new rules and advised interested parties that comments could be submitted until further notice is published in the State Register that the Department intends to withdraw or adopt the proposed rules.

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<sup>10</sup> U.S. Department of Transportation. (2003) *Drinking riding and prevention: A focus group study*. National Highway Traffic Safety and Administration. Pacific Institute for Research and Evaluation. Calverton, Maryland. Retrieved: August 27, 2013. <http://www.nhtsa.gov/search?q=group+ride+>. (p.58).

<sup>11</sup> Minnesota Department of Public Safety (2012) *Minnesota Motor Vehicle Crash Facts*. Office of Traffic Safety. St. Paul, MN. (p. 7).

<sup>12</sup> *Id.* p. 60.

<sup>13</sup> *Id.* p. 60.

<sup>14</sup> Minnesota Department of Public Safety website: <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.

The Department also stated its interest in receiving comments addressing the cumulative effect of any possible new rules governing motorcycle guard certification and qualification requirements. The notice inviting public comments was sent by electronic mail or US mail, to those individuals and organizations identified on June 19, 2012, to those interested parties, which constitutes the Department's list of persons registered to receive information on rulemaking activity. Request for Comments were published in the State Register, 06/25/2012. Additional names and stakeholders interested in the program were listed in a plan that 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 were notified of the rulemaking.

The same notice published that was distributed to interested parties also informed stakeholders that there would be an additional opportunity to comment during the Notice of Intent to Adopt Rules (NIAR) comment period, at a later time. Stakeholders were also notified that the Department would likely convene an Advisory Committee to comment on the possible rules.

The Department appointed an advisory committee of interested and affected stakeholders to comment and assist in the development of the rules while they are under active consideration. Membership for the Motorcycle Road Guard Certificate Advisory Committee was established as of July 27, 2012.

Four Advisory Committee meetings were held from September 2012 through February 2013. Meeting notices and each agenda are posted for the public on the DVS Rules section of the DPS website. Each new draft of the proposed rule was posted to the website. 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.

The Motorcycle Road Guard Advisory Committee held significant discussions on certain topics. Several of the topics are listed below:

- The requirements and definition of what constitutes a "group ride" for the purposes of the Motorcycle Road Guard Certificate Program. Consensus around the duties of a "flagger" under Minn. Statutes, section 169.06., served as a model to consider/adopt. Note: "use of a Road Guard includes more than notification to cities and it must also be escorting a motorcycle group ride."
- Additional consideration for "group ride" status: minimum number of motorcyclists; types of roadways; types of intersections; traffic interruption times; and other laws governing, e.g., Minnesota Department of Transportation (MNDOT).
- Liability insurance coverage shall be required of the individual acting in the capacity as a Road Guard. An "organization or charitable" group general liability coverage would cover the individual(s) functioning as a Road Guard.
- DPS decided to rely on the Motorcycle Safety Center and its Minnesota State Colleges and University instructors as instructors for the MC road guard certification program, thus reducing the level of regulation and costs for the program.

- Road Guard certification is valid for two-years. Certificate holders must take the class every two years.
- Motorcycle Road Guard Certificate holders adherence to traffic control provisions of the Minnesota Manual on Uniform Control Devices, which is authorized under Minnesota Statutes, section 169.06, subdivision 1.
- The potential need for a new chapter in the MNDOT, Minnesota Manual on Uniform Traffic Control Devices (MnMUTCD).
- Types of previous applicant driving convictions and time-lines for factoring into applicant approval process for certification as a motorcycle road guard.
- Safety and equipment, including the preference for high visibility apparel.
- Discussion on the remainder of the rulemaking process and timelines.

Due to the responsibilities associated with the 2013 legislative session, the last meeting of the Motorcycle Road Guard Advisory Committee was held in February, 2013. DVS will present the final draft of the proposed new rules to Motorcycle Road Guard Advisory Committee members through direct mail or electronic means.

The Department plans to publish a Dual Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing And Notice of Hearing if 25 or More Requests For Hearing are received. The Dual Notice and the proposed rule will be sent by U.S. or electronic mail to the individuals and entities who received the Request for Comments and to the individuals and entities described in the next subsection, entitled "Additional Notice." The Dual Notice, the proposed rule, and this Statement of Need and Reasonableness (SONAR) also will be posted for public review on the Driver and Vehicle Services website<sup>15</sup>, and copies of all three documents will be sent to legislators as required by Minnesota Statutes, section 14.116. A copy of this SONAR will be sent to the Legislative Reference Library as required by Minnesota Statutes, section 14.131.

### **Additional Notice**

In accordance with Minnesota Statutes, section 14.14, DPS strove to identify those persons or classes of persons who would be significantly affected by the proposed rule, so that they could be notified of these rulemaking proceedings.

DPS sent copies of the Request For Comments in accordance with the approved Additional Notice Plan. This list included: Representation from the MN Sheriff's Association, Women on Wheels, Instructor/Coach from the MN Motorcycle Safety Center, American Bikers for Awareness, Training and Education (ABATE) of MN, Wright County Sheriff's Office, Savage Police Department, St. Croix – Harley Davidson Owners Group, MN Chiefs of Police Association, Gold Wing Road Riders Association, MN DOT, Road Guardians, Wild Prairie Hogs, New Glory Bike Team, Minnesotans for Safe Driving, St. Paul Police Department, Motorcycle Safety Advisory Task Force, and Moto Primo South, LLC.

<sup>15</sup> <https://dps.mn.gov/divisions/dvs/news/Pages/cdl-medical-certificates.aspx>



On June 7, 2012, the Office of Administrative Hearings approved the Additional Notice Plan submitted by DPS on June 5, 2012.

### **STATUTORY AUTHORITY**

The Department's statutory authority to adopt these rules is set forth in Minnesota Statutes, 2012, Chapter 171.60, subdivision 5. "The commissioner of public safety shall adopt rules to carry out the provisions of subdivisions 1-4 of this section. Sections 1 – 4 become effective one year after publication of the rules adopted under Subdivision 5 in the *State Register*. Subdivision 5 is effective the day following final enactment."

### **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 has 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. 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's plans to propose rules for the motorcycle road guard certificate program.

Industry associations were contacted and made aware of the opportunity to participate in an advisory committee of interested classes of persons. Names of interested individuals referred to DPS were also added to the contact list. The number of enrollees expected to seek motorcycle road guard certification is unknown; therefore the costs of administering and implementing the program are not fully known at this time.

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

The costs are not completely calculated at this time. It is uncertain what number of 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 again. 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 has been 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.

**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 as a result 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 impact cities and increase crash potential.

**7. Comparison with Existing Federal Regulations (Minn. Stat. § 14.131(7))**

DPS must assess any differences between the proposed rule and existing federal regulations and specifically analyze the need for and reasonableness of each difference. There are no known federal regulations related to these proposed rules for the Motorcycle Road Guard Certification Program.

**8. Impact on Farming Operations (Minn. Stat. § 14.111)**

The proposed rule would have no known impact on farming operations. Accordingly, DPS has not notified the Commissioner of Agriculture of this rulemaking.

**9. Performance-Based Regulation (Minn. Stat. §§ 14.002, 14.131)**

Section 14.002 of Minnesota Statutes requires agencies to “develop rules . . . that emphasize superior achievement in meeting the agency’s regulatory objectives” while striving toward “maximum flexibility for the regulated party and the agency in meeting those goals.” Minn. Stat. § 14.002 (2010). The proposed rule meets this standard.

**10. Compliance Costs for Small Business or City (Minn. Stat. § 14.127)**

DPS has considered whether the cost of complying with the proposed rule in the first year following adoption will exceed \$25,000 for any business with fewer than 50 full-time employees or

for any city with fewer than ten full-time employees. The Department has based its determination on the regulatory analysis in the section (5) above (page 9) titled "Probable Costs of Compliance."

**11. Consultation on Local Government Impact (Minn. Stat. § 14.131)**

DPS consulted with the Commissioner of the Department of Management and Budget to evaluate the fiscal impact and benefits of the proposed rule on local governments. Prior to publishing the Notice of Intent to Adopt Rules, the Department completed an analysis of potential fiscal impact. An internal analysis was completed.

Driver and Vehicle Services (DVS) assumptions:

- (1) an effective date one year after publication in State Register of rules adopted;
- (2) a medium rule making expense of \$ 20,448;
- (3) DVS will be the regulating authority providing oversight, including program review of driving records for road guard applicants; curriculum content; requirements reviewed and approved; overseeing instructor qualifications; monitoring hours of training provided; and,
- (4) DVS will not administer the training.

The Office of Traffic Safety (OTS) assumptions:

1. OTS will administer the motorcycle road guard program;
2. OTS will issue road guard certificates once the course is completed;
3. OTS will use current MMSC instructors who are Motorcycle Safety Foundation certified Rider-Coaches at a cost of \$ 30 per hour;
4. twelve MMSC instructors would attend the DOT Flagger Train the Trainer course in order to be qualified trainers at a cost of \$ 75 tuition per person for a total of \$ 900 and a cost of \$ 120 per person for time to attend the 4-hour course for a total of \$ 1,440;
5. the Department would provide the certification training for flaggers throughout the state by an interagency agreement with the MN State Colleges and Universities (MnSCU);
6. certification is valid for two years, after which the course must be completed again; there is no automatic re-certification;
7. a course is required for first-time certification of motorcycle flaggers, and a refresher course, the length of both courses is defined in the proposed rule;
8. the cost to provide certification training would be approximately \$ 500 per session and cost at each two-year re-certification interval is estimated at \$ 400 per session;
9. the Department would provide 15 courses the first year it is available, seven the second year, and four each year thereafter. (one first-time certification and three refreshers);
10. tuition for the course would be established to cover all expenses;
11. data would be provided to OTS on those people successfully completing the certification and re-certification courses;
12. OTS would upload information on certified flaggers to a web page of the MMSC web site where it would be available to law enforcement and other interested parties wanting to confirm an individual's valid motorcycle road guard flagger certification.

## 12. Necessity for Local Implementation (Minn. Stat. § 14.128)

DPS has determined that no town, county, or home rule charter or statutory city will be required to adopt or amend an ordinance or other regulation to comply with the proposed rule. Police departments in cities of the first class will be notified and must approve of all group ride routes and will have the option of 1) controlling traffic and traffic signals as requested by organizers to obtain and use a motorcycle road guard to control traffic regardless of traffic signals. Costs to local governments will depend upon how frequently the cities decide to provide control for traffic and traffic signals themselves. Police officials in smaller cities are not required to approve the group ride route, but shall also be notified.

### LIST OF WITNESSES

If a public hearing is held, DPS anticipates having the following witnesses testify in support of the need for and reasonableness of the proposed rule:

1. Ms. Debra Carlson, Driver Exam Program Manager, Department of Public Safety
2. Ms. Joan Kopcinski, Driver Services Program Director, Department of Public Safety
3. Ms. Patricia McCormack, Driver and Vehicle Services Director, Department of Public Safety
4. William Shaffer, Minnesota Motorcycle Safety Center, Department of Public Safety
5. Helen Bassett, Driver and Vehicle Services, Rules and Legislation Coordinator
6. Major Nancy Silkey, State Patrol, Department of Public Safety
7. Ken Johnson, Traffic Engineering, Minnesota Department of Transportation

### LIST OF EXHIBITS

At the time of this writing, DPS offers this statement of need and reasonableness, a copy of the proposed new rules, certification of the comments and does not anticipate entering any exhibits into the hearing record to demonstrate the need for and reasonableness of the proposed rules and rule amendments.

### 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 is here explained.

## 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 (MMSC) 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. More detail on the scope of effort for each of these agencies is further detailed in Section 11, along with projected costs for each agency. 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; and it is a reasonable and straightforward means by which applicants can also define themselves.

### **Subp. 3. Commissioner.**

This subpart is necessary to identify that the Commissioner of the Department of Public Safety is authorized to carry out the provisions of this new proposed rule; and it clarifies 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 and all program officials are agents authorized to act, by and through the authority of the commissioner 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; and it describes the meaning that disqualification of a motorcycle road guard certificate, to be that the certificate becomes void upon the action of the commissioner of public safety, or 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 insures 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 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, not been disqualified, and is issued by the commissioner and the certificate means that the prescribed curriculum has been completed, issuance of a certificate which is currently valid and has not been disqualified by the commissioner of public safety.

**Subpart 14. Wireless communications device.** Wireless communications device has the same meaning as provided in Minnesota Statutes 169.011, subdivision. 94; and also defined in MS 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 insure 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, and it encompasses data approved by DPS and developed in cooperation with State Patrol, MNDOT, and the OTS, through the Minnesota Motorcycle Safety Center for use in the field.

**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

### PART 7422.0200. MOTORCYCLE ROAD GUARD; AUTHORITY; RESTRICTIONS.

**Subpart 1.** Statutory authority under proposed 7422.0200, Subpart 1, Items A- E, are reasonable and necessary to set limitations consistent with Minnesota Statutes, section 169.06, subdivision 4, and successor requirements of the role and functions of the road guard as a traffic control flagger when escorting a group ride; identifies notice requirements to local law enforcement and road authorities along the route.

**Subp. 2. Requirement to carry certificate.** This rule is necessary and reasonable since it explains the duty of the road guard to present upon request a valid certificate as a motorcycle road guard upon demand by a peace officer, and helps to identify certified road guards at points of contact.

**Subp. 3. Restrictions.** This subpart establishes the minimum number of operators to define a motorcycle group ride and specifies that liability coverage is required for the motorcycle road guard. The subpart also clarifies the responsibility of the sponsoring entity to insure that liability coverage is provided for all participants, including the road guard; ensures proper notice of is provided and that adherence to the route is in place and that the sponsors and motorcycle road guard are functioning subject to Minnesota Statutes, section 169.06, subdivision 4.

**Subp. 4. Requirement to produce proof of insurance.** Items A – C, of this subpart are necessary and reasonable to ensure that the motorcycle road guard is aware of all duties associated with liability coverage and the role of the sponsoring entity of the group ride, related to providing proof of liability insurance. This provision is substantially covered in Sub. 3, and specifies the effect of inability to produce insurance for the individual motorcycle road guard.

**Subp 5. Appeal.** This subpart provides for an appeal process for a road guard when suspension of a road guard certificate is suspended administratively by the commissioner.

### PART 7422.0300 MOTORCYCLE ROAD GUARD CERTIFICATE; QUALIFICATIONS.

**Subpart 1. Statutory requirements.** It is reasonable and necessary to provide applicants of the motorcycle road guard certificate program with notice of the requirement of the expectations that each must meet the requirements under Minnesota Statutes, section 171.60, subdivision 2; and continue to meet these requirements, in order to receive a road guard certificate.

**Subp. 2. Review of driving record.** In Items A – D, the commissioner establishes the parameters that are reasonable and necessary to inform applicants of the administrative review process required to implement the program. Items A – D. inform applicants of the scope of review and the acceptable parameters within which an applicants' prior driving record is a factor in the certification, and is consistent with current requirements for licensed and approved driver education instructors.

**Subp. 3. Prior driving convictions, violations, and incidents.** Items A – D identify prior driving infractions, and associated time limits applicable to the offenses that prohibit certification of the applicant as a motorcycle road guard. It is reasonable to provide the statutory references to applicants, and reasonable to restrict granting of motorcycle road guard certificates to applicants, pursuant to convictions or offenses as defined under Minnesota Statutes, Sections 169.13, and Chapter 169.21; and any moving violations or two petty misdemeanors under Minn. Stat. 169.

**Subp. 4 Hearing.** It is reasonable and necessary for the commissioner to set basic physical expectations for an applicant to the road guard certificate program and to inform the public and applicants, thereby insuring that basic functioning skill requirements are considered.

**Subp 5. Vision.** It is reasonable and necessary for the commissioner to set basic visual qualifications, as mentioned in Subp. 4.

**Subp. 6. Vehicle insurance coverage.** This requirement is self-explanatory and is reasonable and necessary to ensure adherence to standard public safety laws.

**Subp. 7. Continuing requirements.** It is reasonable and necessary to establish expectations of on-going performance and compliance with all of the provisions of this proposed new chapter 7422. Clarification of the meaning of on-going compliance is important as it sets the standard for training, certification, and ensures consistency with existing Minnesota Statutes section 171.04 or 171.13, which are governed under Minnesota Rules parts 7410.2100 – 7410.3000.

#### **PART 7422.0400 MOTORCYCLE ROAD GUARD INSTRUCTOR QUALIFICATIONS.**

This rule provides notice by the commissioner of the qualifications necessary for an interested person to instruct the motorcycle certification course. The rule also clarifies that motorcycle road guard instructors must be MMSC authorized instructors of the motorcycle training program offered by MnSCU; and, must meet the applicable requirements set out in Minnesota Rules Part 7411.0620 and Part 7411.0630. This section also identifies exceptions under Part 7411.0620, subpart 8, related to criminal history convictions. It is reasonable and necessary to identify limitations that might restrict participation by a person interested in instructing the road guard course.

#### **PART 7422.0500 MOTORCYCLE ROAD GUARD CERTIFICATE ISSUANCE; DISQUALIFICATIONS.**

**Subpart 1. Issuance.** Items A – B provide clarification about the time period during which the road guard certification is in force, the time period during which it will expire, and the requirements under the new certificate when expiration occurs. It is reasonable and necessary for the commissioner to advise interested persons and to establish any of the process for issuance of the road guard certificate.

**Subp. 2. Disqualification. Items A. – B.** This subpart recognizes and accommodates changes in the status or compliance among road guard certificate holders, and identifies conditions that would cause disqualification among road guard certificate holders. It is reasonable for the commissioner to advise interested persons of the on-going requirements and penalties of non-compliance. This part also provides references to assist interested persons in understanding the cause and effect of non-compliance with proposed new Part 7422.0300.

**Subp. 3. Appeal.** It is reasonable and necessary for the commissioner to identify an appeal process if a person is disqualified under this part, and for the commissioner to point interested persons to the provisions for appeal under Minnesota Statutes, Chapter 14.

#### **PART 7422.0600 ALCOHOL CONSUMPTION PROHIBITION; VIOLATION.**

Part 7422.0600, provides a clear requirement that the “not a drop” doctrine of no alcohol or controlled substance use is allowable for a motorcycle road guard. Each subpart following in this part details important procedural steps available to law enforcement and to which the motorcycle road guard is subject to, when functioning as a motorcycle road guard. This part also provides notice of the commissioner’s authority to administratively disqualify the certificate of the road guard when infractions occur under this Part. It is reasonable and necessary for the commissioner to clarify in rule the scope and effect of violations of alcohol and controlled substances by a motorcycle road guard.

**Subpart 1. Alcohol and controlled substances use prohibition; violation.** It is reasonable and necessary to identify limitations of the use of alcohol and other controlled substances while fulfilling the duties of a road guard and to specify explicit conditions as well as general conditions that are prohibited.

**Subp. 2. Use of preliminary screening test.** It is reasonable and necessary to clarify that a peace officer has the duty and authority to require the road guard to provide a sample for preliminary screening for use of prohibited substances.

**Subp 3. Use of preliminary screening test result.** It is reasonable and necessary for the commissioner to provide notice of the consequences of the determination by a peace officer that the screening test is positive, and to identify the duty and procedural steps for the peace officer to notify the commissioner as part of the administrative disqualification process.

**Subp. 4. Administrative disqualification.** It is reasonable and necessary to identify the procedural actions available to the commissioner when an infraction occurs under proposed Part 7422.0600. Items A. – B. Identify the options available to the commissioner if infractions occur under these circumstances.

**Subp 5. Reason to believe.** The standard for how a peace officer will determine the use or abuse of alcohol or a controlled substance by a road guard is clarified by this subpart and it is reasonable

and necessary to provide notice of the range of options under Items A. – E. open to a peace officer to establish grounds upon which to take action under Part 7422.0600.

**Subp. 6 Appeal.** This subpart provides information to the public and interested persons about the process for appeal of actions taken by peace officers, or the commissioner under Part 7422.0600, and gives access to reasonable and necessary information.

#### **PART 7422.0700 COURSE INSTRUCTION FREQUENCY.**

This part provides interested persons with notice of how to make application to the motorcycle road guard certification course, and provides notice of the frequency and scope of training required. The rule is reasonable and assists interested persons in identifying opportunities for their participation, or interest. Items A. – B. provide information for individuals interested in the road guard program, and for individuals interested in becoming road guard instructors. Providing this basic information to the public is reasonable and necessary to encourage interest in the program.

#### **PART 7422.0800 DATA CLASSIFICATION; USE OF INFORMATION.**

**Subpart 1. Data classified.** This part provides reasonable, necessary and important notice to the public about how the data collected as part of the motorcycle road guard program will be used and its classification for data privacy purposes; and it clarifies which portion of an applicant or certificate holders information, if any, will be considered as private under Minnesota Statutes, section 13.02. and Minnesota Statutes, section 171.12, related to the applicant's or certificate holder's driving record.

**Subp. 2 Required list.** What data is maintained and to whom the data is available is important information for the commissioner to share with interested persons and road guard certificate holders. The proposed rule provides the commissioner with the authority to release specific data and prescribes the limitations for public release under Items A. – C., under proposed new rule chapter 7422.

#### **PART 7422.0900 COURSE FEE.**

Minnesota Statutes, section 171.60, subdivision 5, directs the Commissioner of the Department of Public Safety to set and impose a fee to cover the cost of establishing and administering the program. This rule is necessary and reasonable to allow the commissioner to fulfill Minnesota law.

### **SAFETY AND EQUIPMENT REQUIREMENTS**

#### **PART 7422.1000 VEHICLE REQUIREMENTS; RESTRICTIONS.**

**Subpart 1 Required equipment.** It is reasonable and necessary for the commissioner to establish standards for required equipment that must be used by a motorcycle road guard in the course of

fulfilling their functions as a road guard. Ensuring the working equipment that allows the road guard to communicate with law enforcement, is identified as required.

**Subp. 2. Restrictions.** Setting the criteria for what types of equipment may not be used is reasonable and necessary. Pedestrians and motorists who are not part of the group ride may be unfamiliar with the duties and nature of the road guard or their level of authority. Ensuring that there is clear differentiation between the safety equipment used by a road guard and other equipment used exclusively by emergency vehicles will help make important distinctions. Further, Item B. limits the participation of passengers under the age of 18.

#### **PART 7422.1100 ROAD GUARD FLAGGING EQUIPMENT; APPAREL REQUIREMENTS.**

**Subpart 1. Flagging equipment.** An important function of a motorcycle road guard is traffic control. Providing and prescribing the type and specifications for equipment for road guards to perform their flagging duties is critical. Items A. – F. set out standards for safety equipment that must be adhered to. This rule is necessary to ensure that program-approved equipment is used and provides the commissioner with the authority to require this equipment for motorcycle road guards.

**Subp. 2. Required high-visibility safety apparel.** This rule is necessary and reasonable as it provides the commissioner with the authority to require that road guard certificate holders comply with approved apparel as specified in proposed rule 7422.1000 and 7422.1100, Items A. – E.

**Subp. 3 ANSI/ISEA 107 -2004 requirement.** This rule is necessary and reasonable and will to provide authority for the commissioner to provide specifications for the type, and performance standards necessary for road guards.

### **PROGRAM CURRICULUM**

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

**Subpart 1. Curriculum requirements.** This rule is necessary and reasonable to authorize the commissioner to establish a training program through the MMSC, for the motorcycle road guard program, and to prescribe the content, duration, and monitoring functions which enable the issuance of the certificates for program graduates. The curriculum will include the content set forth as proposed in Part 7422.1200, subpart 1, items A. –G.

**Subp. 2 Operator Proficiency.** This rule is reasonable and necessary to provide the commissioner with the authority to establish and oversee the process and procedures necessary to ensure the acquisition of skill and proficiency of certified road guards.

**PART 7422.1300 PENALTY.**

This rule provides that a person functioning as a motorcycle road guard is subject to the provisions of Minnesota Statutes, section 171.50, and provides that the cross jurisdictional compact governing driver license provisions is extended to the motorcycle road guard certificate holders and provides authority for enforcement by the commissioner as applicable to persons operating as motorcycle road guards specifically.

**CONCLUSION**

For the foregoing reasons, the proposed rule is both needed and reasonable.

10/22/13

Date



Ramona L. Dohman  
Commissioner

Available for public review on August 30, 2013.