

Via Email

August 16, 2024

Legislative Reference Library

sonars@lrl.leg.mn

**Re: In the Matter of the Proposed Permanent Rules Relating to Soft Body Armor
Reimbursement; Revisor's ID No. R-4822; OAH Docket No. 25-9018-39833**

Dear Legislative Reference Library:

The Minnesota Department of Public Safety intends to adopt rules on the department's program for reimbursing public-safety officers and heads of agencies and entities who buy soft body armor. On August 19, 2024, the department will publish in the *State Register* a Notice of Intent to Adopt Rules Without a Public Hearing.

As required under Minnesota Statutes, section 14.131, we are sending the library an electronic copy of the Statement of Need and Reasonableness.

If there are any questions or concerns, please contact me at kim.parker@state.mn.us.

Sincerely,

Kim Parker

General Counsel

Enclosure: Statement of Need and Reasonableness



STATEMENT OF NEED AND REASONABLENESS

Department of Public Safety

**Proposed Permanent Rules
Relating to Soft Body Armor
Reimbursement**

Revisor's ID No. R-4822

OAH Docket No. 25-9018-39833

August 19, 2024

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General Information

Availability. All required rulemaking notices and documents, including the SONAR and the proposed rule, are available on the [department's rulemaking web page](https://dps.mn.gov/Pages/rulemaking.aspx#search=rulemaking) (<https://dps.mn.gov/Pages/rulemaking.aspx#search=rulemaking>). The SONAR has been available for public review as of August 19, 2024.

Rule records. You can track this rulemaking proceeding and search past department rulemaking records by using the Minnesota Rule Status System, located on the revisor's office [website](https://www.revisor.mn.gov/rules/status/) (<https://www.revisor.mn.gov/rules/status/>).

Alternative format. If you would like this SONAR in another language or an alternative format, such as large print, braille, or audio, please contact Kim Parker, General Counsel, kim.parker@state.mn.us, 651-201-7170, or the Department of Public Safety, 445 Minnesota Street, St. Paul MN 55101.

Abbreviations

APA: Administrative Procedure Act

MMB: Minnesota Management and Budget

OA: Office of Administrative Hearings

SONAR: Statement of Need and Reasonableness

Statute- and Rule-Level Tags

Table 1

Statute	Rule
Subdivision: 1, 2, 3, etc.; Subdivision 1 and then Subd. 2, Subd. 3, etc.	Subpart: 1, 2, 3, etc.; Subpart 1 and then Subp. 2, Subp. 3, etc.
Paragraph: (a), (b), (c), etc.	Item: A., B., C., etc.
Clause: (1), (2), (3), etc.	Subitem: (1), (2), (3), etc.
Item: (i), (ii), (iii), etc.	Unit: (a), (b), (c), etc.
Unit: (A), (B), (C), etc.	Subunit: i., ii., iii., etc.

Shorthand	Shorthand
<i>Minn. Stat. § 299A.38, subd. 1(6):</i> Minnesota Statutes, section 299A.38, subdivision 1, clause (6)	<i>Minn. R. 7522.0400, subp. 3(C)(1):</i> Minnesota Rules, part 7522.0400, subpart 3, item C, subitem (1)

Introduction and Overview

1. Establishing the vest-reimbursement program.

In 1989, the legislature established the department's vest-reimbursement program, which allows peace officers and heads of local law-enforcement agencies to apply for partial reimbursement of purchased soft body armor.¹ The program serves as an important public-safety initiative by:

- supporting peace officers who use protective vests while serving the state and its citizens; and
- encouraging officers to replace old vests with newer vests that incorporate updated technology to better protect peace officers.

The department administers the program by processing applications and disbursing reimbursement payments to eligible applicants. The department has historically maintained a rolling application process in which applications are received on a first-come, first-served basis until all appropriated funding for the fiscal year is spent.

Limited funds coupled with high demand means that the department has never been able to fulfill all eligible reimbursement requests in any two-year budget cycle. This consistent backlog of requests hampers public safety by diminishing the affordability of protection that peace officers need to perform their jobs.

2. Expanding the vest-reimbursement program.

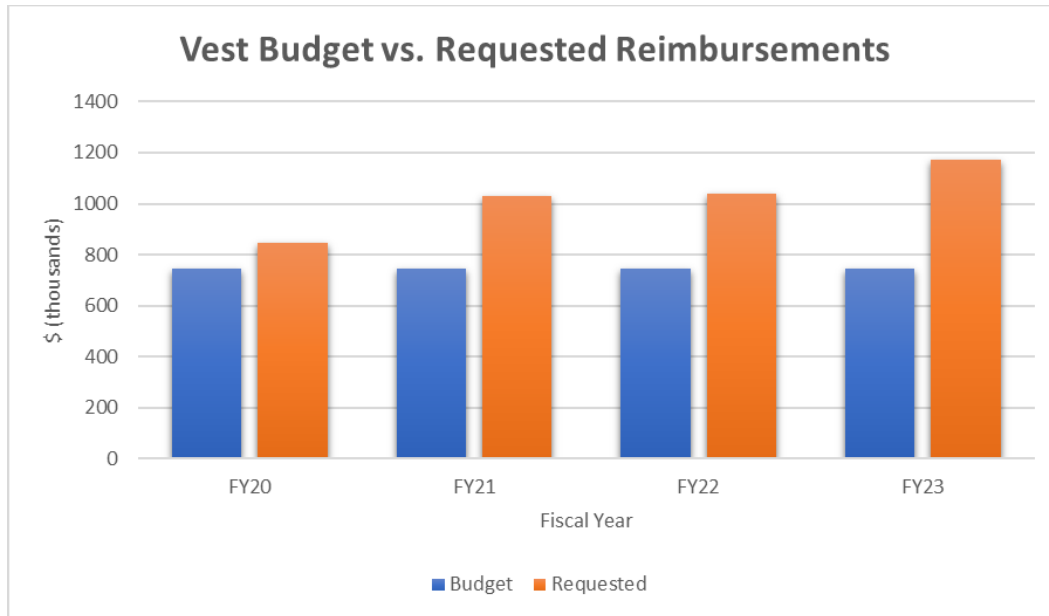
In the 2023 legislative session, the legislature significantly expanded eligibility for the vest-reimbursement program to include firefighters, emergency medical service providers, and the heads of public-safety agencies and entities that employ them.²

Together with expanding the program's scope, the legislature appropriated an additional \$1 million for fiscal years 2024 and 2025;³ this money is in addition to the program's base budget of \$745,000 each fiscal year. But as the following chart shows, even this additional appropriation will be unable to meet the expanded needs of public-safety officers.

¹ Minn. Stat. § 299A.38. Unless indicated otherwise, all statutory citations are to the 2022 *Minnesota Statutes* publication.

² 2023 Minn. Laws, ch. 52, art. 5, sec. 13.

³ 2023 Minn. Laws, ch. 52, art. 2, sec. 3, subd. 2(b).



3. Rulemaking needed due to expanded eligibility.

Although the legislature originally granted the department statutory authority to adopt rules on the vest-reimbursement program, the department did not do so because the statute provided adequate guidance to the department, peace officers, and law-enforcement agencies. But to manage the program’s expanded scope, the department now seeks to adopt a new rule chapter that establishes a fair, efficient, and transparent process for vest reimbursement.

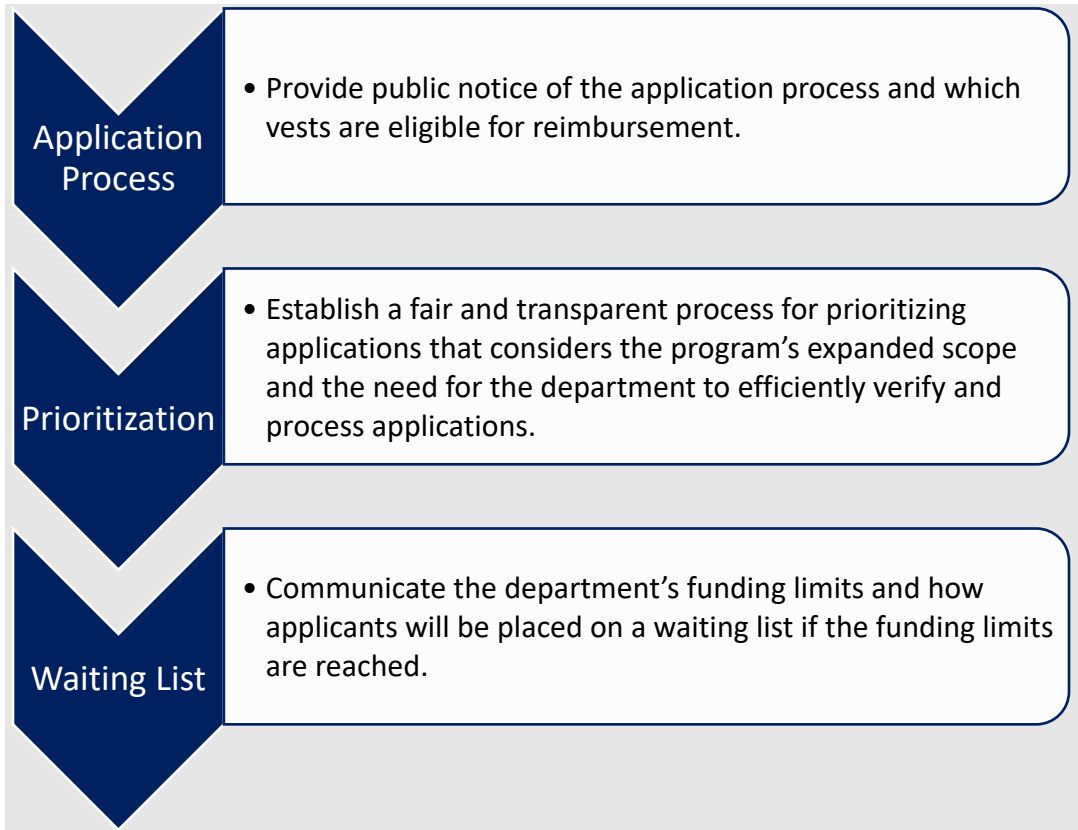
The new rule chapter is also needed and reasonable to guard against petitions of unadopted rulemaking and—because the legislature mandated department rulemaking—to maintain the department’s rulemaking authority so that the department can update the rules due to statutory changes.

4. Plain language.

The department’s proposed chapter is written in plain language. By writing in plain language, the department wants its requirements to be clear and accurate to its staff, its stakeholders, and the public.

Summary of Proposed Rule Changes

The department's proposed rules are simple and straightforward. The department mostly seeks to incorporate its current application process into rule, but the department also wants to ensure accountability and transparency, in line with the APA's purpose. To ensure both accountability and transparency, the department has three main goals.



Statutory Authority

The department was given the discretion to adopt rules on the vest-reimbursement program but has—until now—not exercised that authority.⁴ The legislature, however, has newly directed the department to adopt rules to account for the program’s expansion:

The commissioner of public safety shall amend rules adopted under Minnesota Statutes, section 299A.38, subdivision 4, to reflect the soft body armor reimbursement for public safety officers under that section.⁵

To follow the legislature’s directive and to keep its rulemaking authority,⁶ the department proposes to adopt a rule chapter for administering its program and to ensure agency accountability and transparency.

⁴ Minn. Stat. § 299A.38, subd. 4: “The commissioner may adopt rules under chapter 14 to administer this section.”

⁵ 2023 Minn. Laws, ch. 52, art. 5, sec. 77. Admittedly, the legislature’s directive is inaccurate because by using *amend* it assumes that the department had already adopted a rule chapter. The legislature’s intent, however, is unmistakable.

⁶ *See, e.g.*, Minn. Stat. § 14.125. Note that this APA section was not enacted until 1995, a half-dozen years after the vest-reimbursement program was established.

Regulatory Analysis

As part of its SONAR, the department must analyze eight factors.⁷

1. A description of the 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.

1.1. Classes of persons who probably will be affected by the proposed rule.

The department's proposed rules are likely to affect:

- a. fire departments and volunteer, paid on-call, part-time, and career firefighters;
- b. peace officers and law-enforcement agencies;
- c. emergency medical services providers and emergency medical technicians, advanced emergency medical technicians, and paramedics actively employed by a Minnesota-licensed ambulance service;
- d. government entities such as cities, counties, townships, and Tribal Nations; and
- e. state agencies eligible to purchase soft body armor.

1.2. Classes that will bear costs from the proposed rules.

No class will bear costs from the proposed rule because the vest-reimbursement program is optional for those seeking reimbursement. If a class seeks reimbursement, the application process is free and requires little time to apply.

1.3. Classes that will benefit from the proposed rule.

All classes seeking reimbursement should benefit from the proposed rule because the program encourages them to buy newer vests that will protect them in their public-safety work.

2. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The department estimates that costs for implementing its proposed rules will be minimal. The department has managed the vest-reimbursement program since

⁷ *Id.* § 14.131.

1989, and the rule largely follows existing department practice and policy from its online application process. The only new substantive requirement is the expansion in eligibility and the establishment of criteria for evaluating reimbursement requests. The department estimates that this cost will be covered by existing staff dedicated to the program and will be minimal.

The department is also modernizing and enhancing the functionality of the software it uses to process and pay claims for soft-body-armor reimbursement. The system will be expanded to include firefighters and emergency medical services personnel. It will also offer improved communication with requesters, track funds, and provide data for statistical analysis. The updated software will allow for (1) secure online collection and storage of personally identifiable information; (2) automated notifications, tracking, and approvals; and (3) payment processing workflows. The software upgrade costs will be borne by the department's existing budget.

Other state agencies will incur no costs when applying to the program. State agencies that may apply on behalf of their public-safety employees include the Departments of Natural Resources, Commerce, and Corrections.

3. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

Because the legislature mandated that the department adopt rules on the vest-reimbursement program, the department has determined that there are no less-costly or less-intrusive methods for achieving the rule's purpose, which is to efficiently reimburse public-safety officers through a fair and transparent reimbursement process.

4. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

The department knows of no fair and equitable alternative method to achieve the purpose of the proposed rule, and the legislature has directed it to adopt rules to administer the program. Additionally, not adopting the rule would result in the department losing its statutory authority and invite petitions for unadopted rulemaking.

When developing the rule, the department considered whether to continue its first-come, first-served application process. One benefit to continuing this process would be continuity for applicants and keeping a simple, internal policy for processing applications. But because demand for reimbursement has always

exceeded appropriated money, the department determined that establishing standards for prioritizing applications would help limited money flow to those who most need reimbursement. Additionally, the program's expansion only reinforced the need to reexamine the first-come, first-served policy.

The department also weighed whether to prioritize certain public-safety officers over other public-safety officers—for example, whether peace officers should be prioritized for reimbursement because their need for the vests may be greater than that of other public-safety officers. Ultimately, this approach was disfavored given that the legislature increased appropriations for reimbursements and expanded the program eligibility to acknowledge the need for all public-safety officers.

5. 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.

The statute provides for reimbursement of costs incurred by applicants, and the department is not imposing any new costs as a result of the rule. The application process is optional and free.

6. The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

Not adopting the rule would affect the ability of eligible applicants to apply for reimbursement through a fair and transparent application process. The department would also be unable to add regulations in response to changing statutory requirements or other unforeseen changes that may affect the program. Last, the department would be subject to potential unadopted-rule petitions.

7. An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

There is no federal regulation that affects the department's vest-reimbursement rule. There is, however, a federal grant award from the United States Department of Justice - Office of Justice Programs available for participating

jurisdictions.⁸ Applications for that grant program—the federal Patrick Leahy Bulletproof Vest Partnership—are voluntary, and the department’s vest-reimbursement program is unrelated.

There is also a Compliant Products List published by the National Institute of Justice (NIJ), which certifies products that comply with the NIJ Compliance Testing Program. Like the federal program, the department’s enabling legislation and its proposed rule require vests to be NIJ Compliant to be eligible for reimbursement.

8. An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

There is no cumulative effect because both the state and federal programs are optional and because the state program is separate from the federal one. Both programs contain simple application processes with the goal of protecting public-safety officers in the line of duty.

The federal grant program is available to jurisdictions only and not to individual public-safety officers. The department’s program is available to individual public-safety officers as well as agencies that employ public-safety officers.

Because both programs reimburse only up to 50% of the cost of a vest, reimbursement from either or both programs would not exceed the purchase price.

⁸ <https://www.ojp.gov/program/bulletproof-vest-partnership/overview>. This program reimburses states, local government units, and federally recognized Indian Tribes for up to 50% of the cost of body armor vests purchased for law-enforcement officers. In fiscal year 2022, 173 Minnesota jurisdictions received funding through the federal program.

Performance-Based Rules

The department must describe how it considered and implemented performance-based standards that emphasize (1) superior achievement in meeting the department's regulatory objectives, and (2) maximum flexibility for the regulated party and the department in meeting these goals.⁹

The department's proposed rules detail an application process that ensures legislatively appropriated money is subject to department internal controls. For example, the application process requires an applicant to prove that they are a public-safety officer and to provide an invoice and proof of purchase.

The department also demonstrates superior achievement toward its regulatory objectives with its software for processing applications—this new software will streamline and track applications in a cost-effective manner for the department and applicants.

The rules establish a simple and straightforward application process and provide public notice of how applications will be processed and prioritized. Additionally, the proposed rules achieve the legislature's directive in two main ways:

- 1) under part 7522.0400, subpart 4, the department allows an applicant the flexibility to not provide required application information if the applicant can explain why the information is unavailable; and
- 2) under part 7522.1000, the department establishes a waiting list to save time for applicants who would otherwise need to reapply if they aren't reimbursed during a given application period.

When developing the proposed rule changes, the department encouraged its stakeholders to submit comments and encouraged public participation by sharing drafts with the public and soliciting feedback from affected stakeholders.

Specifically, the department did the following stakeholder engagement:

- Posted on its website: (1) notice of the legislature's expansion of the program and the department's accompanying rulemaking initiative, (2) a Rulemaking FAQ and Rulemaking Fact Sheet, (3) the department's draft rule, (4) an invitation to submit comments by fillable form or email, and (5) contact information for those with questions or concerns.

⁹ Minn. Stat. §§ 14.002, .131.

- Emailed all 11 state Tribal Nations and each of their respective tribal law-enforcement agencies, as well as the Department of the Interior – Bureau of Indian Affairs (Bois Forte Band of Chippewa Indians).¹⁰
- Emailed the following professional associations: MN Chiefs of Police, MN Sheriffs' Association, MN Police and Peace Officers Association, MN Fire Chiefs Association, MN State Fire Department Association, MN Professional Fire Fighters Association, Emergency Medical Services Regulatory Board, MN Ambulance Association, and Fire Marshals Association of Minnesota.
- Emailed the following state agencies and boards: Departments of Corrections and Natural Resources, Bureau of Criminal Apprehension, State Patrol, Alcohol and Gambling Enforcement, and the Minnesota Board of Firefighter Training and Education.
- Addressed the program expansion and the department's accompanying rulemaking activity at speaking engagements, including the Weekly Tribal Leader Governor's Office Meeting (April 11, 2024).

¹⁰ Minnesota's 11 federally recognized Tribal Nations are the Shakopee Mdewakanton Sioux Community, Upper Sioux Community, Lower Sioux Indian Community, Mille Lacs Band of Ojibwe, Prairie Island Indian Community, Red Lake Nation, White Earth Nation, Grand Portage Band of Lake Superior Chippewa, Leech Lake Band of Ojibwe, and Fon Du Lac Band of Lake Superior Chippewa.

Additional SONAR Requirements

1. Consulting with MMB on local government impact.

The department must consult with MMB to help evaluate the fiscal impact and benefits of the proposed rule on units of local governments.¹¹ To consult with MMB, the department sent MMB the SONAR and proposed rules to help it determine the impact and benefits of the proposed rule on units of local governments.

MMB determined that because the department proposes to prioritize individual applicants, the cash flow of any local government that applies for reimbursement may be affected by a delay in reimbursement.¹² But this impact is undetermined, and all applicants that meet the application requirements will be reimbursed, subject to available funding appropriated by the legislature.

2. Cost of complying for small business or small city.

The department must determine if the cost of complying with the proposed rule in the first year after the rule is effective will exceed \$25,000 for (1) a business that has less than 50 full-time employees, or (2) a statutory or home rule charter city that has less than ten full-time employees.¹³

The cost of complying with the proposed rule will not exceed \$25,000 for any business or statutory or home rule charter city because the application process is free.

3. Determining whether the rules require local implementation.

The department must determine if a local government will be required to adopt or amend an ordinance or other regulation to comply with the department's proposed rule.¹⁴ The department has determined that the proposed rule does not affect local ordinances or regulations.

4. Impact on farming operations.

The proposed rule does not affect farming operations.

¹¹ Minn. Stat. § 14.131.

¹² See Exhibit P1.

¹³ Minn. Stat. § 14.127.

¹⁴ *Id.* § 14.128.

Additional Notice Plan

The department's Additional Notice Plan gives notice to persons or classes of persons who may be affected by the proposed rules. The department will email the rules, SONAR, and Notice of Intent to Adopt Rules to the legislature and everyone registered on the department's rulemaking list.¹⁵ The department did not notify the commissioner of agriculture because the rules do not affect farming operations.

The department's Additional Notice Plan complies with the APA because the department will publish notice of the proposed rules and SONAR in the *State Register* and will email copies of the notice, proposed rules, and SONAR to the department's rulemaking list and the following groups:

- 1) the department's Bureau of Criminal Apprehension, State Patrol, Alcohol and Gambling Enforcement Division, and State Fire Marshal's Division;
- 2) the Board of Firefighter Training and Education;
- 3) the Department of Natural Resources;
- 4) the Peace Officer Standards and Training Board;
- 5) the Department of Corrections;
- 6) the Department of Commerce's Insurance and Fraud Division;
- 7) the Emergency Medical Services Regulatory Board;
- 8) the Minnesota Ambulance Association;
- 9) the Minnesota Fire Chiefs Association;
- 10) the Minnesota Professional Fire Fighters Association;
- 11) the Minnesota State Fire Department Association;
- 12) the Fire Marshals Association of Minnesota;
- 13) the Minnesota Chiefs of Police Association;
- 14) the Minnesota Police and Peace Officers Association;
- 15) the Minnesota Sheriffs' Association;
- 16) the League of Minnesota Cities;
- 17) the Minnesota Association of Townships;

¹⁵ See *id.* §§ 14.22, subd. 1(a), .116(b), (c).

- 18) the Association of Minnesota Counties;
- 19) the Minnesota Indian Affairs Council; and
- 20) Office of the Governor, Tribal State Relations.

In Minnesota there are about 20,000 firefighters and 750 fire departments, 12,000 emergency medical service providers, and 10,500 licensed peace officers and 418 law-enforcement agencies. Required use of soft body armor is decided on by the individual department or agency.

The department doesn't plan to notify all individual public-safety officers and agencies because the department isn't the licensing body for the public-safety officers affected in rule. Additionally, the department doesn't have access to all individuals who are peace officers, firefighters, or emergency medical service providers. These public-safety officers are represented by robust associations, and the department is making reasonable efforts to notify classes of persons affected significantly affected by the rule.

The proposed rules, SONAR, and other notices will be published on the department's rulemaking web page¹⁶ and the department's vest-reimbursement web page.¹⁷ Additionally, an announcement about the rules will be posted on the home page of the department's website.

¹⁶ <https://dps.mn.gov/Pages/rulemaking.aspx#search=rulemaking>

¹⁷ <https://dps.mn.gov/divisions/co/programs/public-safety-vest-reimbursement/Pages/default.aspx>

Rule-By-Rule Analysis

1. Each proposed rule requirement must be needed and reasonable.

The most critical requirement of the SONAR is the rule-by-rule analysis, which explains the department's reasoning behind every proposed rule requirement. For each proposed rule requirement, the department must explain two key elements: why the rule is (1) needed, and (2) reasonable.

A rule is reasonable if it is based on an affirmative presentation of facts and evidence that rationally connect with the department's proposed regulatory choice. The department's proposed regulatory choice does not need to be the "best," but the proposed choice must be one that a rational person could have made and one that is not arbitrary or otherwise devoid of articulated reasons.

For example, the department's proposed rule that requires applicants to apply using a department form is reasonable because the requirement affirms current practice, the department is responsible for approving eligible applicants, and the form contains eligibility criteria that is required by statute.

2. The rule-by-rule analysis is organized in numerical order of chapter 7522, divided into multiple categories.

At the beginning of each category, the department establishes a general overview of the need for the rule amendments within the category. This overview is meant to better inform the public about the requirements in each category and helps establish—on the record—the department's argument for adopting the proposed rules.

Table 2

Category	Rule Parts
Applicability and Definitions	7522.0100-.0200
Application Process	7522.0300-.0400
Reimbursement	7522.0500-.0700
Processing and Prioritization	7522.0800-.0900
Waiting List	7522.1000

Last, the department goes through a detailed rule-by-rule analysis within each rule chapter in which the department argues for the need and reasonableness of each rule amendment.

Applicability and Definitions

Parts 7522.0100 to 7522.0200 prescribe the rule's applicability and relevant definitions.

1. 7522.0100: Applicability.

This part notifies the public that the rule chapter is for the department's vest-reimbursement program and that the rule prescribes the application and reimbursement process.

2. 7522.0200: Definitions.

Most of the needed terms are already defined in statute, so it is more efficient to cross-reference to these terms and define other terms that are needed for applicants to understand and comply with the chapter.

The following terms are defined in statute:

- *Commissioner*
- *Firefighter*
- *Peace officer*
- *Public safety officer*
- *Qualified emergency medical service provider*
- *Vest*

In addition to these terms, it is needed and reasonable for the department to define the following terms to simplify the rule language and ensure plain language (that is, judiciously use language):

- Applicant
- Department
- Proof of active status (see page 20)
- Public safety agency

All these terms are needed for the department to enforce the program and for applicants to comply with program requirements.

Application Process

Parts 7522.0300 and 7522.0400 largely detail the department's current application process, a process that has been used since the program was created. This process ensures that the department can timely process applications and that applicants are eligible for reimbursement.

1. 7522.0300: Application notice and application period.

Subpart 1 requires the department to publicly post application details on the department's website. This notice is needed and reasonable because it alerts the public and potential applicants to how much funding is available for the application period, subject to funding already allocated for applicants on a waiting list.

Because the process under part 7522.0800 is like a first-come, first-served process, this public notice is critical to ensuring equal access to application information.

Subpart 2 clarifies that the vest-reimbursement program corresponds with the state's two-year budget cycle, where each fiscal year runs from July 1 through June 30.

2. 7522.0400: Application requirements.

This part establishes what information an applicant must provide when applying for reimbursement. The application is submitted online to provide a simple and easy process for applicants and for the department to process the applications.¹⁸ An application form ensures timely and efficient reimbursement.

The information required under subparts 2 and 3 allows the department to confirm that each applicant is a public-safety officer or an agency that meets the applicable statutory criteria:

- for a peace officer, their licensing number with the state's peace-officer licensing authority, the Peace Officer Standards and Training Board;¹⁹

¹⁸ <https://app.dps.mn.gov/vestrequest/>

¹⁹ See Minn. Stat. §§ 299A.38, subd. 1(3), 626.843.

- for a qualified emergency medical service provider, proof of certification with the Emergency Medical Services Regulatory Board or successor organization;²⁰ and
- for a firefighter, proof of active status (a letter from their agency confirming their position) and their department's national Fire Department Identification Number.²¹

The criteria for each public-safety officer align with how the statute defines each officer. For example, a *peace officer* is defined as an individual licensed by the Peace Officer Standards and Training Board, so the department confirms that an applicant is licensed by requesting the applicant's license number in their application.

Similarly, an applicant claiming reimbursement as a qualified emergency medical service provider is verified by their certification and proof of employment, as the statutory definition requires.

But unlike peace officers or qualified emergency medical service providers, firefighters aren't defined under similar statutory requirements that can prove their employment status or certification. So to ensure that firefighter applicants are "serving a general population within the boundaries of the state,"²² the department proposes to require proof of active status.

Because there is no agency or body that tracks all Minnesota firefighters, the department cannot confirm an applicant's license number like it can for peace officers. But the department can prove a firefighter's active status with a letter from the firefighter's agency. This is a needed and reasonable solution to ensure that public funds are being disbursed to active firefighters.

If the provided information is insufficient for the department to confirm that an applicant is eligible, the department may need to ask the applicant for other information to determine eligibility such as the applicant's address or work-related information.

Subpart 4 allows for an applicant to not provide information required under subparts 2 and 3, but the applicant must explain why they are unable to provide

²⁰ See *id.*, subd. 1(5), 144E.28.

²¹ The Fire Department Identification Number is assigned by the Federal Emergency Management Agency to local firefighter departments listed in the National Fire Department Registry.

²² Minn. Stat. § 299A.38, subd. 1(2).

the required information. This subpart is needed and reasonable to provide flexibility to applicants on a case-by-case basis and allow for them to still receive reimbursement if the department can verify their eligibility.

Subpart 5 requires an applicant to prove that they have purchased a vest; the department uses the invoice and proof of purchase to determine if the applicant's purchase complies with the statute and criteria in rule, so this subpart is needed and reasonable for the department to determine that funds are going to eligible applicants.

Subpart 6 requires an applicant signature, a standard requirement for applications.

Reimbursement

Parts 7522.0500 to 7522.0700 detail the proposed reimbursement requirements such as an applicant's eligibility, the items eligible for reimbursement, and the reimbursement amounts.

1. 7522.0500: Reimbursement eligibility.

1.1. Subpart 1.

Statute delineates most of the eligibility requirements, the main one being that a public-safety officer seeking reimbursement must not have owned a NIJ-compliant vest before the purchase or must own a vest that is at least five years old. The new vest that the applicant is seeking reimbursement for must also comply with the department's proposed criteria under part 7522.0600.

1.2. Subpart 2.

As discussed in the introduction, the department has consistently received applications that exceed the funds that it has been appropriated. To help ensure that public-safety officers are reimbursed for recent vest expenses, it is reasonable to require applicants to apply for reimbursement within a year of purchasing their vests. This time limit will also encourage applicants to apply for timely reimbursement and simplify the department's internal process for verifying purchases.

1.3. Subpart 3.

This subpart prohibits a public-safety officer who serves in more than one capacity from seeking reimbursement twice. For example, an applicant who is a volunteer firefighter and an EMT cannot receive reimbursement for two purchased vests. Or a peace officer who works for two different agencies can't receive reimbursement for more than one purchased vest.

This is a needed and reasonable requirement that allows more applicants to receive reimbursement and fulfills the legislature's intent of reimbursing more public-safety officers when it expanded the program and appropriated additional funding.

2. 7522.0600: Vest eligibility.

Under statute, all vests must meet or exceed standard .0101.03 of the National Institute of Justice.²³ The National Institute of Justice is an agency under the United States Department of Justice that researches, develops, and evaluates criminal-justice policy.²⁴ The institute's current standard is 0101.07, and the institute maintains an associated compliant products list.²⁵

Because the products list changes as the standard changes, it is needed and reasonable for the department to incorporate the list by reference. The list will be easily available on the department's vest-reimbursement web page.

Under subpart 2, the department lists which items are ineligible for reimbursement. Because the institute doesn't test and certify ballistic items other than vests, these items are excluded. In addition, vests must maintain compliance with the institute's products list. Last, shipping costs and sales tax are excluded because they are ancillary costs to the actual cost of the vest.

In addition to the department program, jurisdictions can seek vest reimbursement from the federal Patrick Leahy Bulletproof Vest Partnership. Accordingly, subpart 3 clarifies that an agency applicant can still seek reimbursement from this federal program even if it was reimbursed under the department program. Neither the federal program nor the department's program reimburses more than 50% of the cost of a vest, so even if an agency were reimbursed for the same vest under both programs, the reimbursement amount would not exceed 100 percent the cost of the vest.

3. 7522.0700: Reimbursement amounts.

Reimbursement amounts are determined by statute and adjusted annually for inflation. The department posts these amounts on its vest-reimbursement web page to provide public notice to applicants.

²³ *Id.* § 299A.38, subd. 3(a).

²⁴ <https://nij.ojp.gov/sites/g/files/xyckuh171/files/media/document/nij-brochure-flier.pdf>

²⁵ <https://nij.ojp.gov/topics/equipment-and-technology/body-armor/ballistic-resistant-armor#0-0>

Processing and Prioritization

Because the department has more applicants than available funding, the department needs to develop a fair and transparent process for prioritizing applicants. This need is even greater with the program's expanded eligibility to firefighters and qualified emergency medical service providers.

1. 7522.0800: Determining reimbursement eligibility.

1.1. Subpart 1.

Eligibility is based solely on statutory requirements—as reflected in the proposed rules—and an applicant's ability to certify that they meet the statutory criteria for reimbursement and that they have complied with the rule requirements.

1.2. Subpart 2.

Subpart 2 outlines the reimbursement order, with the department prioritizing individual applicants—as opposed to agencies seeking reimbursement on behalf of their officers. The department proposes prioritizing individual applicants for two reasons: (1) so that one or more large departments do not receive most or all the funds in a reimbursement period, and (2) because individual applicants benefit more from reimbursement because they are less able to absorb the cost of purchasing a vest than a large department.

Because there are more applicants than available funding, the department's reimbursement order begins with applicants on a waiting list and then progresses to the current application period (aligned with the state's fiscal year). As in the waiting list order, the department is prioritizing individual applicants over agency applications.

It is also needed and reasonable for the department to not begin considering an application until it contains the required information under the rule and statute. This requirement also allows the department to timely process applications and reimburse applicants.

2. 7522.0900: Reimbursement method.

Most applicants receive their approved funds electronically, but it is needed and reasonable to provide applicants flexibility and allow for them to receive the funds by mail, if desired.

Waiting List

With limited funds and high demand, the department has historically placed applicants that haven't received funding on a rolling waiting list. Using a waiting list is a fair process that saves applicants the time of reapplying and the department time from reprocessing applications. Part 7522.1000 codifies the department's waiting-list policy and procedure.

1. Subpart 1: Funding limit.

Because the legislature has appropriated funds for a particular purpose, the department cannot disburse more funds than what the legislature has appropriated.

2. Subpart 2: Public notice.

This subpart ensures public transparency and provides notice when the department's funding limit has been reached.

3. Subpart 3: Waiting list.

A waiting list is needed and reasonable because applicants should not have to reapply if they are not reimbursed in a given application period. Besides being fair, a waiting list meets the legislature's directive for performance-based rules that provide applicants flexibility and maximize department efficiency.

Under item B, the department continues its commitment to transparency by notifying applicants when they have been placed on the waiting list.

Conclusion

In the SONAR, the department has established the need for and the reasonableness of the proposed rule chapter. The department has provided the necessary notice and complied with all applicable APA rulemaking requirements. Based on the evidence and information in the SONAR, the proposed amendments are both needed and reasonable.

Bob Jacobson, Commissioner
Department of Public Safety
August 19, 2024