

ADMINISTRATIVE RULES COMMITTEE
September 12, 2011

Good Afternoon Mr. Chairman, Members of the Committee:

My name is Anne Jorgenson Green. I am Legal Counsel with Workforce Safety and Insurance. I submit for your review responses to the questions posed by Legislative Council in their organizational materials. I direct your attention to section 6 of this document, which outlines the subject matter and the reasons for this proposed amendment.

1. Whether the rules resulted from statutory changes made by the Legislative Assembly:

92-01-02-22.2. Out-of-state coverage for law enforcement training.
ANSWER - No.

2. Whether the rules are related to any federal statute or regulation.

ANSWER - No.

3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.

ANSWER - For the creation of this new rule, WSI followed the provisions of N.D.C.C. Chapter 28-32. As required, both a full notice and abbreviated notice of the intent to create, amend and repeal were accomplished and are attached. The full notice was mailed to Legislative Council on April 11, 2011, and the abbreviated notice was published in each official county newspaper in the state (N.D.C.C. § 28-32-10). Attached is a copy of the letter submitted to the Legislative Council and a copy of the letter submitted to the North Dakota Newspaper Association requesting publication, along with a copy of the affidavit of publication. The public hearing was held on May 18, 2011, in the Board Room at WSI's Bismarck offices. The hearing was transcribed and that transcription is on file with WSI. The hearing record was held open for ten days after the hearing. We did not receive comments at the public hearing and no written comments were received during the subsequent 10-day comment period. However, three written comments in support of this proposed rule were received PRIOR to the May 18, 2011, public hearing. A request for opinion as to legality of the proposed rule was made to the Attorney General on June 1, 2011, and the opinion that the rule creation is in compliance with N.D.C.C. Chapter 28-32 was issued on June 14, 2011. Publication of the rule was requested of Legislative Council on June 21, 2011. Copies of all referenced documents, with the exception of the hearing transcript are attached.

4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.

ANSWER - Yes, written comments were received. A copy of WSI's summary and responses to the comments are attached to this document.

5. The approximate cost of giving public notice and holding any hearings on the rules, and the approximate cost (not including staff time) of developing and adopting the rules.

ANSWER -	Cost of Public Notice	\$1,619.60
	Cost of Hearing (transcript)	67.30
	Cost of expert opinion re: Law Enforcement Rule	\$ 280.36
	TOTAL COST	\$1,967.26

6. An explanation of the subject matter of the rules and the reasons for adopting those rules.

1. The purpose for the creation of this rule, Administrative Code Section 92-01-02-22.2 - Out-of-state coverage for law enforcement training, is to extend to law enforcement personnel who are required to be out of state for training, workers compensation coverage for a limited period of time, provided the North Dakota employer provides documentation the workers' compensation system of that state is not applicable to the employer.

7. Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08 and whether a regulatory analysis was issued. Please provide a copy if one was prepared.

ANSWER - Yes, a copy of the regulatory analysis is attached.

8. Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide copies.

ANSWER - Yes, a copy of the Small Entity Regulatory Analysis and Small Entity Economic Impact Statement is attached.

9. Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency. If so, please provide a fiscal note.

ANSWER - **SUMMARY OF PROPOSED RULE:** Workforce Safety & Insurance has reviewed the proposed administrative rule in conformance with Section 28-32-08.2 of the North Dakota Century Code. The proposed rule allows WSI to extend coverage for out of state training for North Dakota law enforcement personnel if the workers compensation system of that other state is not applicable.

FISCAL IMPACT: No significant impact is anticipated.

10. Whether a constitutional takings assessment was prepared as required by North Dakota Century Code Section 28-32-09. Please provide a copy if one was prepared.

ANSWER – None was required.

11. If these rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules.

ANSWER – This new rule was not adopted under the emergency provision.

NEW RULE:

92-01-02-22.2. Out-of-state coverage for law enforcement training. The organization may, at its sole discretion, extend workers' compensation coverage by written agreement to North Dakota employers for their employees engaged in law enforcement training outside the state for a limited period of time, provided the North Dakota employer provides documentation that the workers' compensation system of that state is not applicable to the employer.

History: Effective October 1, 2011.

General Authority: NDCC 65-02-08

Law Implemented: NDCC Sections 65-08-01(1)(a) and 65-02-13.1.

REGULATORY ANALYSIS OF PROPOSED NEW RULE

New Section: 92-01-02-22.2

Title of New Section: Out-of-state coverage for law enforcement training.

GENERAL: The following analysis is submitted in compliance with §28-32-08 of the North Dakota Century Code.

This rule is not expected to impact the regulated community in excess of \$50,000.

SMALL ENTITY REGULATORY ANALYSIS OF PROPOSED NEW RULE

New Section: 92-01-02-22.2

Title of New Section: Out-of-state coverage for law enforcement training.

GENERAL: The following analysis is submitted in compliance with §28-32-08.1 of the North Dakota Century Code.

POSSIBLE WAYS TO MINIMIZE THE ADVERSE IMPACT ON SMALL ENTITIES:

No adverse impact is anticipated by the proposed new rule.

Establishing less stringent compliance or reporting requirements: N/A

Establishing less stringent schedules or deadlines for compliance or report: N/A

Consolidating or simplifying compliance or reporting requirements: N/A

Establishing performance standards that replace design or operational standards required in the proposed rule: N/A

Exempting small entities from all or part of the rule's requirements: N/A

SMALL ENTITY ECONOMIC IMPACT STATEMENT

New Section: 92-01-02-22.2

Title of New Section: Out-of-state coverage for law enforcement training.

GENERAL: The following analysis is submitted in compliance with §28-32-08.1 of the North Dakota Century Code.

Based on our analysis of this rule, which is being created, there is no need to complete a Small Entity Economic Impact Statement as there is no adverse impact.



POLICE DEPARTMENT
Arland H. Rasmussen
Chief of Police



Workforce Safety & Insurance
Attn: Julie Porsborg, Legal
PO Box 5585
Bismarck, ND 58506-5585

To Whom It May Concern:

I am writing in support of the proposed new rule 92-01-02-22.2 relating to coverage of law enforcement officers during periods of training conducted while out of state.

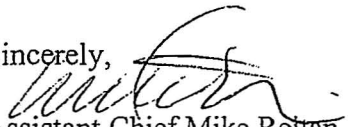
As a law enforcement officer and administrator I have experienced the issue from both sides. In 2000 I had the opportunity to attend the FBI National Academy in Virginia. The training took place over a period of three months. There was always the question of whether I was covered or not. Fortunately, I was not injured during the uncovered portion of my time out of state.

I have also had the opportunity to send an officer to the FBI National Academy for three months. I struggled with trying to locate coverage in Virginia for the officer. Virginia requirements for insurance only involved employers with 3 or more employees working in state. Our local insurance agent was able to find a policy to provide coverage but we felt that to be cost prohibitive. The department actually found it cheaper to fly our employee back to North Dakota so he could remain in compliance with the administrative rules.

Having the ability to provide coverage to law enforcement employees attending specialized training out of state would ensure protection for both the employee and the employer. The proposed new rule is greatly needed.

Thank you for your consideration.

Sincerely,


Assistant Chief Mike Reitan
West Fargo Police Department

Bismarck Police Department



May 3, 2011

Ms. Julie Porsborg
Workforce Safety & Insurance
1600 E. Century Ave., Ste. 1
Bismarck, ND 58506-5585

Dear Ms. Porsborg:

I am writing concerning the proposed new rule, section 92-01-02-22.2 of the N.D. Administrative Code. This new rule relates to out-of-state coverage for law enforcement training. I am in full support of this new rule as it will greatly aid in resolving a problem we have encountered as an employer when we have officers attend extended out-of-state training sessions. We experience great difficulty in obtaining coverage for officers in these situations as the worker's compensation system of the state will not provide coverage for our officers and we have great difficulty in locating a private insurer to provide coverage. If a private insurer is found to provide coverage, the coverage is at significant expense.

Early this year, we had an officer attend extended training in Virginia which required us to obtain private insurance coverage as the worker's compensation system of Virginia would not provide coverage. We had difficulty in obtaining private coverage and the cost of the coverage was \$657.00.

I believe that this rule will resolve a difficult issue for law enforcement agencies in North Dakota and encourage adoption of the rule. I appreciate the opportunity to provide comment and would be available to answer any questions.

Sincerely,

KEITH WITT
Chief of Police

kw






Police Department

122 South Fifth Street • P.O. Box 5548 • Grand Forks, ND 58206-5548

John D. Packett
Chief of Police

Phone: (701) 787-8000
Fax: (701) 780-8253

May 5th, 2011

Bryan Klipfel, Director 
ND Workforce Safety and Insurance
1600 East Century Avenue, Suite 1
Bismarck ND 58503-0644



Dear Director Klipfel,

Recently our agency encountered difficulty obtaining workforce safety insurance coverage for a sworn police employee scheduled to attend the FBI National Academy in Quantico, Virginia. This course required the employee to be out of state longer than 30 consecutive days. The City of Grand Forks carries the "all states coverage" offered by your agency. However, this coverage is only covers employees out of state for less than 30 consecutive days.

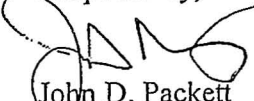
Grand Forks Police Department staff was advised by representatives of ND Workforce Safety and Insurance to contact Virginia Worker's Compensation Commission to obtain insurance coverage for the employee. It was determined the State of Virginia did not offer such services. After considerable staff time, the Grand Forks Police Department purchased coverage through a national high risk insurance company via a local insurance vendor.

As is the case with many law enforcement agencies within North Dakota, the Grand Forks Police Department occasionally sends employees out of state for training courses the duration of which extend beyond 30 consecutive days. Examples include: K-9 Handler, Polygraph Examiner, Bomb Disposal, Northwestern University's School of Police Staff and Command, Southern Police Institute and the FBI National Academy. Comparable training in these critical public safety operational, management, and leadership development disciplines is not routinely available within North Dakota.

I have recently become aware of your efforts to facilitate an administrative rule change that would allow such coverage for employees working out of state beyond the current 30 day limit. This administrative rule change would be very beneficial and the Grand Forks Police Department strongly supports this change.

Thank you for your continued efforts in regards to this matter. Please feel free to contact me anytime if you require any further action.

Respectfully,


John D. Packett
Chief of Police

cc: Daryl Hovland, Human Resources Director, City of Grand Forks

Administrative Rule Hearing
May 18th, 2011
Board Room, Workforce Safety & Insurance

My name is Anne Jorgenson Green. I am Staff Counsel and the Director of Legal Services for Workforce Safety and Insurance (WSI), and I will be presiding over this hearing.

Today is May 18th, 2011, the time is 9:00 a.m., and we are in the Board Room of WSI located at 1600 East Century Avenue, in Bismarck, North Dakota. This is the time and place set for this hearing, and at this time I will officially open this hearing.

This public hearing has been called for the purpose of allowing all interested parties an opportunity to submit information concerning the proposed administrative rules for Workforce Safety and Insurance. Information gathered at this hearing will be relayed to WSI for its deliberation and final decision.

This hearing is being transcribed. Please identify yourself for the record before you speak. Everyone present at this hearing will be given an opportunity to speak if they wish. If you have a prepared statement or a written copy of your statement, it is appreciated and helpful to us. Please submit it.

A registration sheet is at the podium. Please sign the registration sheet before you leave the hearing today.

Today's hearing is set for one proposed change to Title 92 of the North Dakota Administrative Code. This proposal does not impact the regulated community in excess of \$50,000.

The purpose of the proposed amendment to Administrative Code § 92-01-02-22.2 - Out-of-state coverage for law enforcement training is to clarify the extent of coverage for law enforcement personnel traveling for training outside the state of North Dakota.

Are there any questions or comments on any of the proposed changes to the Administrative Code that I have raised today?

Thank you for your comments. The information gathered at this hearing will be assessed by Workforce Safety and Insurance. WSI is the final decision making body. WSI will provide a written response to each comment received today and written comments received within the comment period. Please ensure your names and addresses are legible on the sign in sheet. The record on this hearing will be kept open for written comment for 10 working days from the date of this hearing through the close of business, June 1st, 2011. .

OR

Hearing none, I'd like to thank you all for your time and attendance. Please remember to sign the registration sheet at the podium.

You may direct your written comments to these proposed rules to:

Julie Porsborg
1600 East Century Avenue
Bismarck, ND 58506-5585.

That is the same address listed on the published notices of this hearing.
This hearing on the proposed rules and amendments is closed. Thank you for your time.

ATTENDANCE SHEET - MAY 18, 2011 ADMIN RULE HEARING
(Coverage for out-of-state law enforcement training)

Please print your name:

Leo C. Witkowski Burleigh County Sheriff's Dept.

Berry Schumacher - WSI

Todd Halvorsen - WSI

Glenna Ellison AG-Capital-HResources

Anne Green - WSI

Julie Forsborg - WSI
