MINUTES
PUBLIC SAFETY COMMISSION
January 7, 2003
Austin, Texas

The Public Safety Commission met in Austin, Texas on January 7, 2003. Attending the meeting were Chairman Colleen McHugh and Commissioners Robert Holt and James B. Francis, Jr.

DPS Staff members present:
Tommy Davis, Director
David McEathron, Assistant Director
Frankie Waller, Assistant Director
Tom Haas, Accounting & Budget Control
Randy Elliston, Lamar Beckworth, Bob Burroughs & Coy Clanton, Traffic Law Enforcement
C. J. Havrda, Earl Pearson & Ray Coffman, Rangers
Marshall Caskey & Kent Mawyer, Criminal Law Enforcement
Burton Christian, Administration
David Gavin, Crime Records
Andy Mokry & Tavia Wendlandt, Building Program
Judy Brown, Frank Elder, Angela Parker & Greg Gloria, Driver License
Farrell Walker & Jude Schexnyder, Audit & Inspection
Mary Ann Courter, General Counsel
Mary Lauderdale, Information Management Service
Jack Reichert, Aircraft
Tela Mange, Public Information
Michael Kelley, Legislative Liaison
David Outon, Internal Affairs
Dorothy Wright, Secretary

The meeting was called to order by Chairman McHugh. Proper notice had been posted.

I. **Minutes.** Upon motion by Commissioner Holt and seconded by Commissioner Francis, the minutes of the December 4, 2002 meeting were approved.

II. **Public comment.** There was no public comment.

III. **Discharge appeal hearing of Pamela Evans.** Commissioner McHugh announced appellant's attorney had requested a continuance which had been granted.

IV. **Budget matters.** Tom Haas updated the Commission on budget matters, including the Department's LAR status, FTE cap and the HUB program. There was some discussion on gasoline prices and an existing appropriations rider to cover increased costs.

A. **Acceptance of donation of computer equipment from Criminal Information Sharing Alliance for use by CLE Division.** Marshall Caskey briefed the Commission on the proposed donation. Upon motion by Commissioner Francis and seconded by Commissioner Holt, the donation was accepted.

V. **Audit & Inspection Report.** Farrell Walker gave the Audit & Inspection report.

VI. **Division reports.** David Gavin gave the Administration Division report. There was some discussion on CHL renewals, electronic arrest and disposition reporting, the Amber Alert program, recruit schools, the Houston Regional building and the Florence firing range. Randy Elliston gave the Traffic Law Enforcement Division report. There was some discussion on the bus inspection program, TLE drug interdiction efforts, dive team activities and Inaugural security. The Driver License Division report was given by Judy Brown. There was some discussion on 2002 accomplishments, ongoing investigations of fictitious documents and possible fraud by some DL employees and the reengineering project. Marshall Caskey gave the Criminal Law Enforcement Division report. Civil commitment monitoring, the CODIS and forensic backlogs, CODIS cold hits, and a "24/7" call center to support law enforcement were discussed. The Ranger report was given by C. J. Havrda. Mary Lauderdale gave the Information Management Service report. Bob Burroughs gave an update on joint efforts between DPS and the Texas Commission on Environmental Quality (TCEQ) for implementation of the State's vehicle emissions inspection/maintenance program. Coy Clanton updated the Commission on the border safety inspection stations.

VII. **For publication for public comment.**

A. **Proposed amendments to Rules 1.51-1.58, 37 TAC Secs. 1.51-1.58, relating to public information policies**

B. **Proposed repeal of Rule 1.60, 37 TAC Sec. 1.60, relating to requests for Department of Public Safety Press Cards**

C. **Proposed amendment to Rule 1.71, 37 TAC Sec. 1.71, relating to videotapes and photographs requested by the public to be made available to them under the guidelines of the Texas Public Information Act**

Mary Ann Courter briefed the Commission on the proposed amendments and repeal. There was some discussion on the proposed repeal of Rule 1.60. Upon motion by Commissioner Francis and seconded by Commissioner Holt, the attached amendments and repeal described in VII.A, VII.B and VII.C were unanimously approved for publication for public comment.

D. **Proposed amendments to Rules 7.12 & 7.13, 37 TAC Secs. 7.12 & 7.13, relating to emergency management planning and preplanning requirements**

E. **Proposed amendments to Rule 7.27, 37 TAC Sec. 7.27, relating to emergency management operations**

Burt Christian briefed the Commission on the proposed amendments. Upon motion by Commissioner Francis and seconded by Commissioner Holt, the attached amendments described in VII.D and VII.E were unanimously approved for publication for public comment.

F. **Proposed amendment to Rule 18.1, 37 TAC Sec. 18.1, relating to Driver Training School testing and issuance of instruction permits**

G. **Proposed amendments to Rules 18.21 & 18.22, 37 TAC Secs. 18.21 & 18.22; Proposed repeal of existing Rules 18.23 & 18.24, 37 TAC Secs. 18.23 & 18.24;**

Proposed new Rules 18.23-18.25, 37 TAC Secs. 18.23-18.25, relating to Parent Taught Driver Education

H. **Proposed amendments to Rules 18.31 & 18.32, 37 TAC Secs. 18.31 & 18.32; Proposed repeal of existing Rule 18.33, 37 TAC Sec. 18.33, Proposed new Rule 18.33, 37 TAC Sec. 18.33, relating to Department approved Driver Education Courses**

Frank Elder briefed the Commission on the proposed amendments, repeals and new rules. Upon motion by Commissioner Holt and seconded by Commissioner Francis, the attached amendments, repeals and new rules described in VII.F, VII.G and VII.H were unanimously approved for publication for public comment.

VIII. **For adoption.**

A. **Proposed repeal of existing Rule 16.9, 37 TAC Sec. 16.9; Proposed new Rule 16.9, 37 TAC Sec. 16.9, relating to licensing requirements, qualifications, restrictions, and endorsements to drive in intrastate commerce and provides for a vision and limb intrastate waiver program for Texas, as published in 27 TexReg 7372, August 16, 2002**

B. **Proposed amendments to Rules 16.8 & 16.14, 37 TAC Secs. 16.8 & 16.14, referring applicants not meeting required physical requirements for interstate commercial driver license operations to Section 16.9 regarding waiver application requirements for intrastate operation and Section 16.14 for waiver requirements for interstate operation, as published in 27 TexReg 7369, August 16, 2002**

Frank Elder and Mary Ann Courter briefed the Commission on the proposed repeal, new rule and amendments. Upon motion by Commissioner Francis and seconded by Commissioner Holt, the attached repeal, new rule and amendments were unanimously approved for final adoption.

IX. **Personnel matters, pending and contemplated litigation, ongoing criminal investigations, status of purchase of real property.** The Commission went into Executive Session pursuant to Tex. Gov. Code Secs. 551.071, 551.074 & 411.0041 to discuss personnel matters including Special Ranger and Special Texas Ranger commissions, pending and contemplated litigation, status of purchase of real property and ongoing criminal investigations. Upon reconvening Regular Session, Commissioner McHugh announced that the Commission had discussed only those matters listed above. Special Ranger commissions for DPS retirees Larry H. Bolton, Kenneth Douglas, Pedro Lozano, Jr., Larry J. Peterson, Teddy L. Smith and James Woodley, Jr., had been considered. Upon motion by Commissioner Holt and seconded by Commissioner Francis, Special Ranger commissions were unanimously approved for the above named individuals.

A motion was made by Commissioner Holt, seconded by Commissioner Francis and unanimously passed adjourning the meeting.

Read and approved this 5 day of February, 2003.

Chairman

Member

Member

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 7, 2003, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Commercial Drivers License
Title 37 T.A.C. Part I, Chapter 16
Subchapter A
Section Number 16.9

The Texas Department of Public Safety adopts the repeal of Section 16.9, relating to Licensing Requirements, Qualifications, Restrictions, and Endorsements, without changes to the proposed text as published in the August 16, 2002, issue of the Texas Register (27 TexReg 7372).

The repeal of Section 16.9 is necessary due to substantive changes having been made concerning Licensing Requirements, Qualifications, Restrictions, and Endorsements for Commercial Driver License applicants. Adoption of the repeal is filed simultaneously with an adoption for new Section 16.9 which provides for a vision and limb intrastate waiver program for Texas that is consistent with federal standards and guidelines.

No comments were received regarding adoption of the amendments.

The repeal is adopted pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, Section 522.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

The effective date of the rules is 20 days after the rules are filed with the Texas Register Division, Office of the Secretary of State.

This order constitutes the order of the Commission required by the Administrative Procedures Act, Government Code, Section 2001.033.

Colleen McHugh, Chairman
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 7, 2003, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Commercial Drivers License
Title 37 T.A.C. Part I, Chapter 16
Subchapter A
Section Numbers 16.8, 16.9 and 16.14

The Texas Department of Public Safety adopts new Section 16.9 and amendments to Section 16.8 and Section 16.14, concerning Licensing Requirements, Qualifications, Restrictions, and Endorsements, with changes to the proposed text as published in the August 16, 2002, issue of the Texas Register (27 Tex. Reg. 7369) and will republish them.

New Section 16.9 adds language providing for a vision and limb intrastate waiver program for Texas that is consistent with federal standards and guidelines.

Amendment to Section 16.8 adds a note referring applicants not meeting required physical requirements for interstate commercial driver license operations to Section 16.14 for waiver requirements for interstate operation.

Amendment to Section 16.14 changes the title of the section.

Written comments were received by the department through September 16, 2002 from the following individual: Chris Carthel, BWXT Pantex.

The substantive comments as well as the department's responses thereto, are summarized below:

COMMENT: The department was not consistent in the use of federal terminology when referring to interstate vision exemptions and limb skill performance evaluation certificates.

RESPONSE: In Section 16.8(c) we find that we were not consistent in the use of terminology and have made the appropriate changes.

COMMENT: The usage of the term "waiver" concerning the intrastate vision program is misleading and inconsistent with the federal terms.

RESPONSE: The department's vision and limb programs are modeled following the federal physical requirements. The department continues to use the term waiver in an effort to distinguish the federal and state programs from each other. We feel that this will assist enforcement personnel in determining which program the CDL holder has been granted authority to operate. No changes were made as a result of this comment.

COMMENT: The Federal Motor Carrier Safety Administration published a final rule on July 31, 2002 which revised the disqualification sanctions found in 49 CFR 383.5 and 383.51.

RESPONSE: At the time these rule changes were proposed, the new federal regulations had not been posted. At this time the department does not have statutory authority to include the new disqualification actions regarding these offenses when operating a non-CMV. Due to the lack of statutory authority to implement all portions of the new federal regulations, the department has determined that the corresponding Transportation Code should be the appropriate cite. Also, by citing the Transportation Code, this rule will not require amendment when statutory authority is received for the new disqualification actions. No changes were made as a result of this comment.

COMMENT: The department uses the term "conviction" when the federal regulation uses "violation".

RESPONSE: The department does not have statutory authority to act on a violation until it has been adjudicated as a conviction. No changes were made as a result of this comment.

COMMENT: Inclusion of the word "waiver" in the title for Section 16.14 is inconsistent with the section's discussion of federal SPE certificates.

RESPONSE: The department agrees with this recommendation and has made that change.

The amendments and new section are adopted pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, Section 522.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

The effective date of the rules is 20 days after the rules are filed with the Texas Register Division, Office of the Secretary of State.

This order constitutes the order of the Commission required by the Administrative Procedures Act, Government Code, Section 2001.033.

Colleen McHugh, Chairman
Public Safety Commission