

MINUTES
PUBLIC SAFETY COMMISSION
June 24, 2003
Austin, Texas

The Public Safety Commission met in Austin, Texas on June 24, 2003. Attending the meeting were Chairman Colleen McHugh and Commissioner Robert Holt. Commissioner James B. Francis, Jr., was unable to attend.

DPS Staff members present:

Tommy Davis, Director
David McEathron, Assistant Director
Tom Haas, Accounting & Budget Control
Randy Elliston & Danny Knauth, Traffic Law Enforcement
C. J. Havrda & Earl Pearson, Rangers
Marshall Caskey & Kent Mawyer, Criminal Law Enforcement
Burton Christian, Administration
Frank Elder, Driver License
Farrell Walker, Audit & Inspection
Mary Ann Courter, General Counsel
Mary Lauderdale & Ed Kelly, Information Management Service
Lisa Block, Public Information
David Outon, Internal Affairs
Jack Reichert & Steve Powell, Aircraft
Tavia Wendlandt, Building Program
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 McHugh, the minutes of the May 20, 2003 meeting were approved.
- II. **Public comment.** There was no public comment.
- III. **Budget matters.** Tom Haas updated the Commission on the impact to DPS of some legislation signed by the Governor.
 - A. **Acceptance of donation of computer equipment from Criminal Information Sharing Alliance.** Marshall Caskey briefed the Commission on the proposed donation. Upon motion by Commissioner Holt and seconded by Commissioner McHugh, the donation was accepted for use by the Criminal Law Enforcement Division.
 - B. **Acceptance of monetary donation from Wal-Mart Stores, Inc.** Tom Haas briefed the Commission on the proposed donation. Upon motion by Commissioner Holt and seconded by Commissioner McHugh, the donation was accepted for use by the Lubbock Safety Education Service.
 - C. **Acceptance of 1996 Dodge Ram pick-up from National Insurance Crime Bureau.** Randy Elliston briefed the Commission on the proposed donation. Upon motion by

Commissioner Holt and seconded by Commissioner McHugh, the donation was accepted for use by the Houston Vehicle Inspection Service.

D. Approval of seized fund purchases. Marshall Caskey and the respective Chiefs briefed the Commission on the proposed purchases utilizing seized funds. There was some discussion on the proposed purchases. Upon motion by Commissioner Holt and seconded by Commissioner McHugh, the attached purchases were approved.

E. Pending retirements. Colonel Davis briefed the Commission on the possible effect to DPS of the commissioned officer reduction due to the legislatively mandated budget reduction in House Bill 3208. There was some discussion on the Department's intent to request a peace officer exemption for this budget reduction and the consideration of a possible change in the recruit applicant requirements without lowering the standards to increase the applicant pool because of the possible mass retirement.

IV. Audit & Inspection Report. Farrell Walker gave the Audit & Inspection report.

V. Discharge appeal hearing of DPS employee Sandra Allen. Sandra Allen appeared before the Commission to appeal her discharge from the Department. She was not represented by Counsel. Phillip Adkins, Legal Services, represented the Department. Court reporter was Rhonda Howard of Esquire Deposition Services. Opening statements were made by Mr. Adkins and Ms. Allen. All witnesses were sworn. Witnesses appearing for DPS were Cynthia Marple and Dee Jordan, Motor Carrier Bureau, and Sandra Allen. DPS Exhibit #1 was submitted and accepted by the Commission. The only witness appearing for appellant was Sandra Allen. No appellant exhibits were submitted. Closing statements were made by Mr. Adkins and Ms. Allen.

VI. Personnel matters; pending and contemplated litigation, including Lon Burnam v. Thomas A. Davis, Jr., et al; 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, 551.072 & 411.0041 to discuss personnel matters including Special Ranger and Special Texas Ranger commissions, pending and contemplated litigation including Lon Burnam v. Thomas A. Davis, Jr., et al, status of purchase of real property, and ongoing criminal investigations. Upon reconvening Regular Session, Commissioner McHugh announced that the Commission had discussed only personnel matters, evidence presented in the Sandra Allen discharge appeal hearing, pending litigation including Lon Burnam v. Thomas A. Davis, Jr., et al, and ongoing criminal investigations. A motion was made by Commissioner Holt and seconded by Commissioner McHugh affirming the action of the Director in discharging Sandra Allen (see attached Order). The Commission had considered Special Ranger commissions for DPS retirees Gary Alfred, Sally Nicholas and Alan Smith and Special Texas Ranger commissions for DPS retirees Howard Dunham and Larry Gilbreath. Upon motion by Commissioner Holt and seconded by Commissioner McHugh, Special Ranger and Special Texas Ranger commissions were respectively approved for the above named individuals.

VII. Division reports. Burt Christian gave the Administration Division report. There was some discussion on the sex offender registration paperwork, electronic arrest and disposition reporting, CHL processing and the building program. Randy Elliston gave the Traffic Law

Enforcement Division report. There was some discussion on L&W road checks, the drug detector canine program, dive team activities and TLE drug interdictions. The Driver License Division report was given by Frank Elder. There was some discussion on legislation impacting their Division, the CRIS project, the DL record system upgrade, the Goodwill Industries summer intern program, accident statistics and duplicate license issuance via the internet. Marshall Caskey gave the Criminal Law Enforcement Division report. There was some discussion on the CODIS/DNA backlog, tracking of trends in possible terrorism financing, and DNA and forensic uses. The Ranger report was given by C. J. Havrda. Mary Lauderdale gave the Information Management Service report. Danny Knauth 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. Randy Elliston updated the Commission on the border safety inspection stations.

VIII. For publication for public comment.

- A. Proposed amendment to Rule 1.101, 37 TAC Sec. 1.101, relating to bomb threats.** Randy Elliston briefed the Commission on the proposed amendment. Upon motion by Commissioner Holt and seconded by Commissioner McHugh, the attached amendment was unanimously approved for publication for public comment.
- B. Proposed repeal of existing Rules 32.2-32.8, 37 TAC Secs. 32.2-32.8, relating to bicycle safety; Proposed amendments to Rule 32.1, 37 TAC Sec. 32.1 and proposed new Rules 32.2 & 32.3, 37 TAC Secs. 32.2 & 32.3, relating to bicycles – use and safety.** Burt Christian briefed the Commission on the proposed amendments, repeal and new rules. Upon motion by Commissioner Holt and seconded by Commissioner McHugh, the attachment amendments, repeal and new rules were unanimously approved for publication for public comment.

IX. For adoption.

- A. Proposed amendments to Rules 1.3 & 1.4, 37 TAC Secs. 1.3 & 1.4; Proposed new Rule 1.5, 37 TAC Sec. 1.5, relating to programs administered by various divisions within the Department, as published in 28 TexReg 3218, April 18, 2003**
- B. Proposed amendment to Rule 18.3, 37 TAC Sec. 18.3, relating to Commercial Driver Training School testing and issuance of instruction permits, as published in 28 TexReg 3219, April 18, 2003**
- C. Proposed amendment to Rule 19.7, 37 TAC Sec. 19.7, relating to Breath Alcohol Testing regulations, as published in 28 TexReg 3220, April 18, 2003**

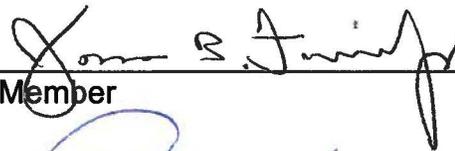
Mary Ann Courter briefed the Commission on the above proposed amendments and new rule. Upon motion by Commissioner Holt and seconded by Commissioner McHugh, the attached amendments and new rule were unanimously approved for final adoption.

- D. Proposed amendment to Rule 23.93, 37 TAC Sec. 23.93, relating to vehicle emissions inspection requirements, as published in 28 TexReg 3223, April 18, 2003.** Danny Knauth briefed the Commission on the above proposed amendment. Upon motion by Commissioner Holt and seconded by Commissioner McHugh, the attached amendment was unanimously approved for final adoption.

A motion was made by Commissioner Holt and seconded by Commissioner McHugh adjourning the meeting.

Read and approved this 15 day of July, 2003.


Chairman


Member


Member

FORFEITED FUNDS EXPENDITURE REVIEW COMMITTEE
COMMITTEE ACTION REPORT

Date: 6/16/03

Division/Service/Section making request:

Administration Division, Staff Support Service, Training Academy Bureau

Description of Item(s) requested (attach request memo):

40' x 50' Pre-engineered Steel Building to include concrete pad, 26 Gauge R Panels, Lighting, Garage-type doors, 10' eave height, 1½" – 12" roof pitch

Describe Overall Impact of Request:

Building to store and protect equipment from elements at Florence Firearms Facility. Cost includes site preparation, extension of utilities, and engineering services.

Equipment Location:

Field

Headquarters

Both

Estimated Cost of this Request: \$71,300

RECOMMENDATION OF COMMITTEE:

Approval

Fund _____

Not Approved

Control Number 03-014

Reason if NOT Approved:

Marshall Cashner
Committee Chairman

6/16/03
Date

James R. Dancy
Director

6-23-03
Date

Approved
for the Public Safety Commission

6-24-03
Date

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**FORFEITED FUNDS EXPENDITURE REVIEW COMMITTEE
COMMITTEE ACTION REPORT**

Date: 6/16/03

Division/Service/Section making request:

Administration Division, Staff Support Service, Training Academy Bureau

Description of Item(s) requested (attach request memo):

Security System for Florence Firearms Range and the Perimeter Fence

Describe Overall Impact of Request:

To protect range, equipment, and supplies in remote area of Williamson County.

Equipment Location:

Field

Headquarters

Both

Estimated Cost of this Request: \$320,650

RECOMMENDATION OF COMMITTEE:

Approval

Fund _____

Not Approved

Control Number 03-015

Reason if NOT Approved:

Committee Chairman

6/16/03
Date

Director

6-23-03
Date

Approved

for the Public Safety Commission

6-24-03
Date

IN THE MATTER OF
THE APPEAL OF DISCHARGE OF
SANDRA A. ALLEN

§
§
§
§
§

BEFORE THE
PUBLIC SAFETY COMMISSION
IN AUSTIN, TRAVIS COUNTY, TX

ORDER

BE IT REMEMBERED that the Public Safety Commission convened to hear the appeal of discharge of Sandra A. Allen on the 24th day of June, 2003. Ms. Allen received adequate notice of the hearing on this matter and did appear in person. Pursuant to §411.007, Government Code, the Commission proceeded to hear evidence in the above-captioned matter.

After reviewing all of the evidence presented at the hearing, the Commission finds there is substantial credible evidence that Sandra A. Allen failed to maintain sufficient competency to perform the duties and assume the responsibilities of her position.

The Commission finds that this conduct was in violation of the Department's rules and regulations and in violation of the Public Safety Commission rules as outlined in the preliminary decision to discharge rendered by Colonel Davis on March 13, 2003.

Therefore, the Commission finds that there is just cause to discharge Sandra A. Allen and affirms the Director's decision in this matter.

On motion of Comm. Holt, seconded by Comm. McHugh, the discharge was affirmed.

ENTERED AND SIGNED on the 24 day of June, 2003.



Colleen McHugh, Chairman
Public Safety Commission

7/6/03

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On June 24, 2003, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Organization and Administration
Title 37 T.A.C. Part I, Chapter 1
Subchapter A
Section Numbers 1.3, 1.4 and 1.5

The Texas Department of Public Safety adopts amendments to Section 1.3, Section 1.4, and new Section 1.5, relating to Objective, Mission, and Program, without changes to the proposed text as published in the April 18, 2003, issue of the Texas Register (28 TexReg 3218).

Amendment to Section 1.3(b)(1)(F) is necessary due to a name change of that particular service within the department. Subparagraphs (B) and (C) of paragraph (b)(2) are deleted as they are encompassed within subparagraph (A). Amendment to Section 1.4 is necessary to delete subsection (c) which is no longer a program within the Traffic Law Enforcement Division. New Section 1.5 is necessary as the Driver License Division, having been deleted from Section 1.4(c), is now a separate program within the department.

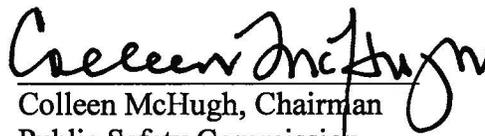
No comments were received regarding adoption of the amendments and new section.

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 Government Code, Section 2001.039

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

7/1/03

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On June 24, 2003, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Commercial Driver Training School Testing and Issuance of Instruction Permits
Title 37 T.A.C. Part I, Chapter 18
Subchapter A
Section Number 18.3

The Texas Department of Public Safety adopts amendments to Section 18.3, concerning Driver Education, without changes to the proposed text as published in the April 18, 2003, issue of the Texas Register (28 TexReg 3219).

Amendments to the section are necessary in order to change the title of the subchapter to better reflect content. Amendments further require that commercial driver training schools obtain an original transaction from a local driver license office in order to have a driver license number to assign to the student when the commercial driver training school issues that student an instruction permit. The department has experienced cases in the past where commercial driver training schools have administered written examinations for the issuance of an instruction permit to students 14 years of age. Since these students are not eligible, due to their age, to be issued the original transaction for the assignment of a driver license number, the department feels that examinations for the issuance of the instruction permit should not be given until the student qualifies for the issuance of the original transaction assigning a driver license number.

No comments were received regarding adoption of the amendments.

The amendments 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 521.005.

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

7/1/03

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On June 24, 2003, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Breath Alcohol Testing Regulations
Title 37 T.A.C. Part I, Chapter 19
Subchapter A
Section Number 19.7

The Texas Department of Public Safety adopts an amendment to Section 19.7, concerning Breath Alcohol Testing Regulations, without changes to the proposed text as published in the April, 18, 2003 issue of the Texas Register (28 TexReg 3220).

Amendment to Section 19.7(h) is necessary in order to correct a reference to statute.

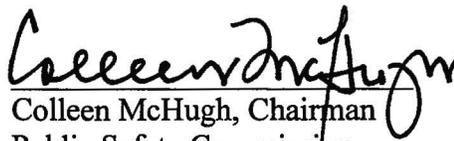
No comments were received regarding adoption of the amendment.

The amendment 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; Texas Transportation Code, Section 724.003, which authorizes the department and the State Office of Administrative Hearings to adopt rules to administer this chapter, and Texas Transportation Code, Section 724.016.

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

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TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On June 24, 2003, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Vehicle Inspection
Title 37 T.A.C. Part I, Chapter 23
Subchapter G
Section Number 23.93

The Texas Department of Public Safety adopts amendments to Section 23.93, concerning vehicle emissions inspection requirements, without changes to the proposed text as published in the April 18, 2003, issue of the Texas Register (28 TexReg 3223). The section defines commonly used terms; provides for control procedures; testing waivers and extensions; prohibitions; recognition requirements for recognized emissions repair technicians and recognized repair facilities; requirements for certified emissions inspection stations and inspectors; audit authority; and the adoption of department manuals for operation of certified emissions inspection stations.

The amendments to Section 23.93 are necessary to harmonize the department rule relating to vehicle emissions inspection (I/M) requirements with those of the Texas Commission on Environmental Quality (TCEQ). TCEQ adopted amendments to 30 TAC Section 114.50, Vehicle Inspection and Maintenance and corresponding revisions to the Texas Inspection and Maintenance State Implementation Plan, published in the December 20, 2002 issue of the Texas Register (27 TexReg 11996). As a result, the on-board diagnostic (OBD) testing requirement in El Paso County is a contingency I/M measure effective 12 months after publication in the Texas Register of the determination by TCEQ that the contingency measure will be implemented.

The department also adopts amendments clarifying administration of the I/M program. These amendments include clarifying the definition of a "designated vehicle," adding the definition of an "excepted vehicle," clarifying the definition of the term "primarily operated," and clarifying the term "two years old." The amendments also clarify department control requirements regarding inspection in non-I/M counties by use of an affidavit. Finally, the department clarifies the prerequisites for granting an individual vehicle waiver.

The department received one comment on the proposed amendments from the Texas State Inspection Association (TSIA). TSIA's comment as well as the department's response thereto is summarized below.

COMMENT: TSIA strongly suggests that reference to initial two-year certificate be omitted from the definition of "two years old" because it confuses program participants with the two-year exemption from emissions testing and recommended textual changes to effect this suggestion. TSIA included its interpretation of the Texas Clean Air Act, the State Implementation Plan (I/M portion), the applicable federal and TCEQ rule regarding the two year exemption and its effect on the remote sensing program and the emission test on resale requirement. Additionally, TSIA recommended including numerous new rules, such as procedures for bypassing the RPM requirement in the ASM test, procedures for OBD non-communication, procedures for OBD test failures with no excessive emissions, and fuel cap test bypasses procedures.

RESPONSE: The department disagrees with this comment. First, the department does not concur with the interpretative effort proffered by TSIA. All inspection stations and inspectors, including those represented by TSIA, must comply with the rules promulgated by this department under Transportation Code,

well

Subchapter F. References to other legal authorities outside this rule can cause confusion among inspection station personnel regulated by the vehicle inspection program. Second, the other topics submitted by TSIA for future rulemaking concern testing procedures, more properly addressed in the operation manuals for inspection stations published by the department. These manuals are currently undergoing revision. Third, two members of the Vehicle Emissions Inspection and Maintenance Advisory Committee operate certified vehicle inspection stations authorized to conduct emissions testing. These committee members suggested the definitional change to the term "two years old" and the department concurred with their suggestion. Finally, the department has determined use of the two-year certificate is an intrinsic part of the definition of "two years old" because it is easily understood by the general public and its expiration is a triggering event in the inspection cycle. No changes were made as a result of this comment.

The amendments are adopted pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission (commission) to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, Section 548.301, which authorizes the commission to adopt rules establishing a motor vehicle emission inspection and maintenance program.

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

2/1/06