

**MINUTES
PUBLIC SAFETY COMMISSION
March 25, 2003
Austin, Texas**

The Public Safety Commission met in Austin, Texas on March 25, 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
Tom Haas, Accounting & Budget Control
Randy Elliston, Lamar Beckworth, Bob Burroughs, Danny Knauth & Coy Clanton, Traffic Law Enforcement
Richard Baxter, Alcohol Breath Test
C. J. Havrda, Earl Pearson & Tony Leal, Rangers
Marshall Caskey & Kent Mawyer, Criminal Law Enforcement
Burton Christian, Administration
Andy Mokry & Tavia Wendlandt, Building Program
Greg Gloria, Frank Elder & Angie Parker, Driver License
Farrell Walker, Audit & Inspection
Mary Ann Courter & Duncan Fox, General Counsel
Mary Lauderdale & Ed Kelly, Information Management Service
Jack Reichert & Steve Powell, Aircraft
Lisa Block, 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 Francis and seconded by Commissioner Holt, the minutes of the February 5, 2003 meeting were approved.
- II. **Public comment.** Kevin Tuerff, Tuerff-Davis Enviro Media, presented the Texas Public Relations Association's 2003 Silver Spur award for Best Community Relations effort to Commissioner McHugh and Major Bob Burroughs and his staff for DPS' AirCheck Texas program.
- III. **Budget matters.** Tom Haas updated the Commission on the status of the Department's legislative budget request.
- IV. **Discharge appeal hearing of Charles Turk.** Charles Turk appeared before the Commission to appeal his discharge. He was represented by Attorney Tom Pappas. DPS was represented by Aline Aucoin of Legal Services. Court reporter was Rhonda Howard of Esquire Deposition Services. Opening statements were made by both attorneys. All

witnesses were sworn. Witnesses appearing for DPS were Sergeant William Diggs and Lieutenant Michael Scullin, Highway Patrol. DPS Exhibit #1 was submitted and accepted by the Commission. Witnesses appearing for appellant were Remedios Zuniga, Trooper Barry Thornton and Charles Turk. Testimony was proffered by Mr. Pappas on behalf of Troopers Greg Stewart, Ralph Watkins, Herman Ward & Charles Smith. Appellant Exhibits # 1, 2 and 3 were submitted and accepted by the Commission. No closing statements were made.

- V. Personnel matters, pending and contemplated litigation, ongoing criminal investigations, status or 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, 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. The Commission had considered Special Ranger commissions for DPS retirees Charles C. Graham, Lloyd B. Kohring, Alvin E. Lewis, Roland C. Real, Jimmy Tillinghast, Johnny G. Carter, Darryl S. White and Wayne C. Watson and Special Texas Ranger commissions for DPS retirees Jimmy T. Hailey, Richard W. Rose and James W. Tatman. Upon motion by Commissioner Holt and seconded by Commissioner Francis, Special Ranger and Special Texas Ranger commissions were approved for the above named individuals respectively except Johnny G. Carter, Darryl S. White and Wayne C. Watson.
- VI. Audit & Inspection Report.** Farrell Walker gave the Audit & Inspection report.
- VII. A. Acceptance of donation of 2 John Deere Gators from U.S. Smokeless Tobacco Co.** Burt Christian briefed the Commission on the proposed donation. Upon motion by Commissioner Francis and seconded by Commissioner Holt, the donation was unanimously accepted.
- B. Acceptance of monetary donations from James B. Francis, Jr. and Robert Holt.** Tom Haas briefed the Commission on the proposed donations for DPS' use in purchasing property in Athens. Upon motion by Commissioner Holt and seconded by Commissioner Francis, the donations were unanimously accepted.
- VIII. Division reports.** Burt Christian gave the Administration Division report. There was some discussion on the State Emergency Management Council, CHL processing and the building program. Commissioner Holt had to leave the meeting at this time due to a previous commitment. Randy Elliston gave the Traffic Law Enforcement Division report. There was some discussion on TLE drug interdictions and the Dallas North Tollway tag procedures. The Driver License Division report was given by Greg Gloria. There was some discussion on on-line driver license renewals. Marshall Caskey gave the Criminal Law Enforcement Division report. 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.

- IX. Appointment of Inspection & Maintenance Advisory Committee member.** Bob Burroughs briefed the Commission on the need for appointing a member to the committee to represent vehicle inspection station owners. A motion was made by Commissioner Francis and seconded by Commissioner McHugh unanimously reappointing Grant Smith to a 3 year term.
- X. For publication for public comment.**
- A. Proposed amendments to Rules 1.3 & 1.4, 37 TAC Sec. 1.3 & 1.4; proposed New Rule 1.5, 37 TAC Sec. 1.5, relating to programs administered by various divisions within the Department.** Mary Ann Courter briefed the Commission on the proposed amendments and rule. Upon motion by Commissioner Francis and seconded by Commissioner McHugh, the attached amendments and rule were unanimously approved for publication for public comment.
 - B. Proposed amendment to Rule 18.3, 37 TAC Sec. 18.3, relating to Commercial Driver Training School testing and issuance of instruction permits.** Frank Elder briefed the Commission on the proposed amendment. Upon motion by Commissioner Francis and seconded by Commissioner McHugh, the attached amendment was unanimously approved for publication for public comment.
 - C. Proposed amendment to Rule 19.7, 37 TAC Sec. 19.7, relating to Breath Alcohol Testing regulations.** Richard Baxter briefed the Commission on the proposed amendment. Upon motion by Commissioner Francis and seconded by Commissioner McHugh, the attached amendment was unanimously approved for publication for public comment.
 - D. Proposed amendment to Rule 23.93, 37 TAC Sec. 23.93, relating to vehicle emissions inspection requirements.** Bob Burroughs briefed the Commission on the proposed amendment. Upon motion by Commissioner Francis and seconded by Commissioner McHugh, the attachment amendment was unanimously approved for publication for public comment.
- XI. For adoption.**
- A. Proposed amendment to Rule 1.285, 37 TAC Sec. 1.285, relating to the order in which vouchers for video units will be awarded to law enforcement agencies for the purpose of installing video and audio equipment, as published in 27 TexReg 12165, Dec. 27, 2002**
 - B. Proposed amendments to Rules 1.51-1.58, 37 TAC Secs. 1.51-1.58, relating to public information policies, as published in 28 TexReg 908, Jan. 31, 2003**
 - C. Proposed repeal of Rule 1.60, 37 TAC Sec. 1.60, relating to requests for Department of Public Safety Press Cards, as published in 28 TexReg 910, Jan 31, 2003**
 - D. Proposed amendments 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**

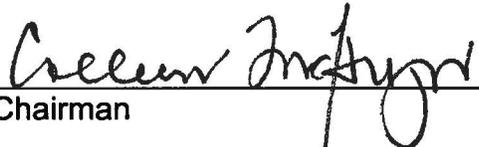
guidelines of the Texas Public Safety Information Act, as published in 28 TexReg 910, Jan. 31, 2003

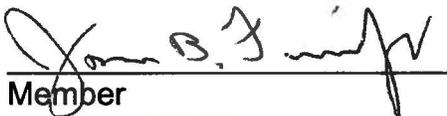
- E. Proposed amendments to Rules 11.3 & 11.4, 37 TAC Secs. 11.3 & 11.4, relating to commercial vehicle registration enforcement guidelines, as published in 27 TexReg 12166, Dec. 27, 2002**
- F. Proposed amendment to Rule 11.52, 37 TAC Sec. 11.52, relating to commercial vehicle weight enforcement and rearranging excess cargo, as published in 27 TexReg 12166, Dec. 27, 2002**
- G. Proposed amendment to Rule 16.13, 37 TAC Sec. 16.13, relating to farm-related service waivers for Commercial Driver Licenses, as published in 27 TexReg 12167, Dec. 27, 2002**
- H. Proposed repeal of Rule 16.41, 37 TAC Sec. 16.41, relating to Nonresident Commercial Driver Licenses, as published in 27 TexReg 12169, Dec. 27, 2002**
- I. Proposed repeal of Rule 16.74, 37 TAC Sec. 16.74, relating to fees for Commercial Driver Licenses, as published in 27 TexReg 12169, Dec. 27, 2002**
- J. Proposed amendments to Rules 16.93 & 16.99, 37 TAC Secs. 16.93 & 16.99, relating to sanctions and disqualifications for Commercial Driver Licenses, as published in 27 TexReg 12170, Dec. 27, 2002**

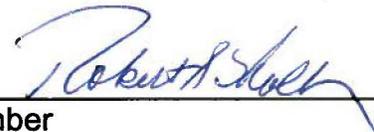
Mary Ann Courter briefed the Commission on the above proposed amendments and rule repeals. Upon motion by Commissioner Francis and seconded by Commissioner McHugh, the attached amendments and rules were unanimously approved for final adoption.

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

Read and approved this 16 day of April, 2003.


Chairman


Member


Member

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On March 25, 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 W
Section Number 1.285

The Texas Department of Public Safety adopts an amendment to Section 1.285(1), concerning the order in which vouchers for video units will be awarded to law enforcement agencies for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A) of the Texas Code of Criminal Procedure, without changes to the proposed text as published in the December 27, 2002, issue of the Texas Register (27 TexReg 12165).

The purpose of the amendment to Section 1.285(1) is to have the rule more closely reflect what the department believes is the legislative intent regarding Article 2.137(a) of the Texas Code of Criminal Procedure. Therefore, Section 1.285(1) is amended to include marshals of an incorporated city, town, or village that are the primary law enforcement agency in their jurisdiction.

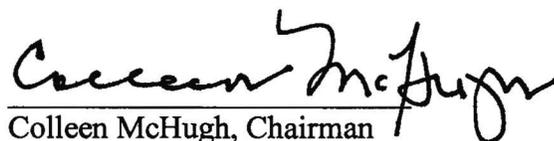
No comments were received regarding adoption of the amendment.

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; Article 2.137(a) of the Texas Code of Criminal Procedure, which requires the department to adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A) of the Texas Code of Criminal Procedure, including specifying criteria to prioritize funding or equipment provided to law enforcement agencies; and Article 2.138 of the Texas Code of Criminal Procedure, which authorizes the department to adopt rules to implement Articles 2.131-2.137 of the Texas Code of Criminal Procedure.

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 March 25, 2003, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Organization and Administration
Title 37 T.A.C. Part I, Chapter 1
Supchapter D
Section Numbers 1.51 – 1.58

The Texas Department of Public Safety adopts amendments to Sections 1.51-1.58, concerning Public Information Policies, without changes to the proposed text as published in the January 31, 2003, issue of the Texas Register (28 TexReg 908).

Amendment to Section 1.51 is necessary because some of the information that peace officers and other department employees have access to is confidential. The previous rule provided department employees with discretion over the release of information. After certain changes were made to the Texas Public Information Act, employees are now expected to refer these type calls to the Public Information Office instead of answering them on their own.

Amendments to Sections 1.52, 1.53, and 1.56-1.58 are necessary for clarification purposes only and are not substantive in nature. Amendment to Section 1.54 is necessary because the rule as previously adopted was incomplete. Amendment to Section 1.55(a) was necessary for clarification purposes only and was not substantive in nature.

One written comment was received by the department. The written comment was received from Mr. Ronald D. Stevens of Graham, Texas.

Mr. Stevens comment as well as the department's response thereto, is summarized below:

COMMENT: Mr. Stevens inquired whether the Public Information Office would answer questions from the general public, as well as from the news media.

RESPONSE: The department's Public Information Office will continue to answer questions from the general public, as well as from the news media. No changes were made as a result of this comment.

The amendments are adopted pursuant to Texas Government Code, Section 411.004(3) and Section 411.006(4), which provides the Public Safety Commission with the authority to adopt rules necessary for carrying out the department's work. The Director, subject to the approval of the Commission, shall have the authority to adopt rules considered necessary for the control of the department.

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 March 25, 2003, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Organization and Administration
Title 37 T.A.C. Part I, Chapter 1
Supchapter D
Section Number 1.60

The Texas Department of Public Safety adopts the repeal of Section 1.60, concerning Requests for Department of Public Safety Press Cards, without changes to the proposed text as published in the January 31, 2003, issue of the Texas Register (28 TexReg 910).

Repeal of the section is necessary due to the director having determined that the issuance of press cards is not necessary for the department's accomplishment of its statutory responsibilities nor does this program substantially enhance the department's accomplishment of those responsibilities.

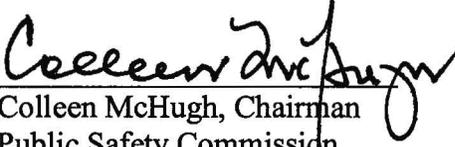
No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to Texas Government Code, Section 411.004(3) and Section 411.006(4), which provides the Public Safety Commission with the authority to adopt rules necessary for carrying out the department's work. The Director, subject to the approval of the Commission, shall have the authority to adopt rules considered necessary for the control of the department.

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 March 25, 2003, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Organization and Administration
Title 37 T.A.C. Part I, Chapter 1
Supchapter E
Section Number 1.71

The Texas Department of Public Safety adopts an amendment to Section 1.71, concerning Videotapes and Photographs, without changes to the proposed text as published in the January 31, 2003, issue of the Texas Register (28 TexReg 910).

Amendment to the section is necessary to clarify that the department will make documents which are requested by the public available to them under the guidelines of the Texas Public Information Act.

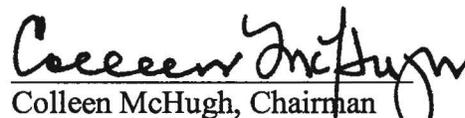
No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, Section 411.004(3) and Section 411.006(4), which provides the Public Safety Commission with the authority to adopt rules necessary for carrying out the department's work. The Director, subject to the approval of the Commission, shall have the authority to adopt rules considered necessary for the control of the department.

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 March 25, 2003, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Commercial Vehicle Registration
Title 37 T.A.C. Part I, Chapter 11
Subchapter A
Section Numbers 11.3 and 11.4

The Texas Department of Public Safety adopts amendments to Section 11.3 and Section 11.4, relating to Commercial Vehicle Registration, without changes to the proposed text as published in the December 27, 2002, issue of the Texas Register (27 TexReg 12166).

Section 11.3 is amended so that the current Texas Transportation Code chapter that addresses vehicle registration is reflected in the rule.

Amendment to Section 11.4 is necessary in order to update the definition of the term "apportionable vehicle."

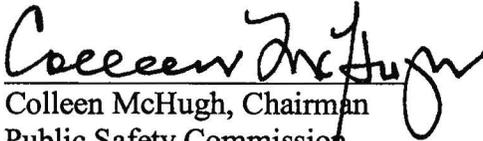
No comments were received regarding adoption of the amendments.

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 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



TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On March 25, 2003, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Commercial Vehicle Registration
Title 37 T.A.C. Part I, Chapter 11
Subchapter D
Section Number 11.52

The Texas Department of Public Safety adopts an amendment to Section 11.52, relating to Commercial Vehicle Registration, without changes to the proposed text as published in the December 27, 2002, issue of the Texas Register (27 TexReg12166).

Amendment to Section 11.52 is necessary in order to cite to an additional section of Texas Transportation Code, Chapter 621.

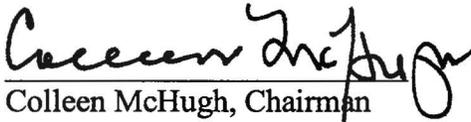
No comments were received regarding adoption of the amendment.

The amendment is proposed 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



TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On March 25, 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 16.13

The Texas Department of Public Safety adopts an amendment to Section 16.13, concerning Farm-Related Service Industry Waiver, without changes to the proposed text as published in the December 27, 2002, issue of the Texas Register (27 TexReg12167).

Section 16.13(c)(4)(D) is amended to delete the specific listing of serious traffic violations and replace the listing with the appropriate Texas Transportation Code, Section 522.003(25). This will allow for the rule to track legislative changes without further amendments.

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 and Texas Transportation Code.

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 March 25, 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 B
Section Number 16.41

The Texas Department of Public Safety adopts the repeal of Section 16.41, concerning Nonresident Commercial Driver Licenses, without changes to the proposed text as published in the December 27, 2002, issue of the Texas Register (27 TexReg 12169).

The section is repealed because statutory authority provides for the issuance of a Nonresident Commercial Driver License at the discretion of the department. Therefore, this does not need to be restated by rule.

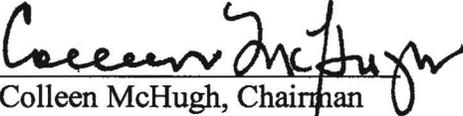
No comments were received regarding adoption of the repeal.

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

Handwritten initials

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On March 25, 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 C
Section Number 16.74

The Texas Department of Public Safety adopts the repeal of Section 16.74, concerning Fees, without changes to the proposed text as published in the December 27, 2002, issue of the Texas Register (27 TexReg 12169).

The section is being repealed as the need for this rule no longer exists. The rule previously provided for the staggering of the fee structure which expired in December, 2001.

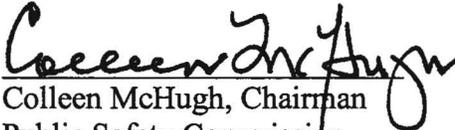
No comments were received regarding adoption of the repeal.

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 March 25, 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 D
Section Numbers 16.93 and 16.99

The Texas Department of Public Safety adopts amendments to Section 16.93 and Section 16.99, concerning Sanctions and Disqualifications, without changes to the proposed text as published in the December 27, 2002, issue of the Texas Register (27 TexReg 12170).

Section 16.93 is amended to eliminate language in rule that is specific in statute; clarify the use of offenses for suspension, disqualification, and habitual violator cases and provide direction to the Transportation Code cite; and clarify statutory reference with regard to offenses that may be used in these cases.

Section 16.99(b) is amended to correctly name the bureau responsible for reinstatement in this instance. This bureau was previously known as the Driver Improvement and Control Bureau.

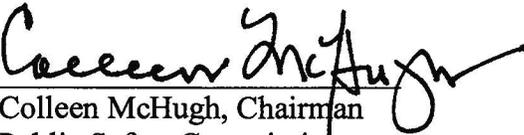
No comments were received regarding adoption of the amendments.

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 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

