

**MINUTES
PUBLIC SAFETY COMMISSION
May 20, 2003
Austin, Texas**

The Public Safety Commission met in Austin, Texas on May 20, 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, Bob Burroughs & Coy Clanton, Traffic Law Enforcement
C. J. Havrda & Earl Pearson, Rangers
Marshall Caskey & Kent Mawyer, Criminal Law Enforcement
Burton Christian, Administration
Judy Brown, Greg Gloria, Kim Smith, Angie Parker & Frank Elder, Driver License
Farrell Walker & Jude Schexnyder, Audit & Inspection
Mary Ann Courter, General Counsel
Mary Lauderdale & Ed Kelly, Information Management Service
Tela Mange, Public Information
Michael Kelley, Legislative Liaison
David Outon, Internal Affairs
Jack Reichert & Steve Powell, Aircraft
Dorothy Wright, Secretary

Guests in attendance were Representative Lon Burnam, Les Breeding of Representative Burnam's staff and Roberta Bilsky, House General Investigating Committee.

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 April 16, 2003 meeting were approved.
- II. **Public comment.** Representative Lon Burnam addressed the Commission reference the Department's handling of the search for missing legislators. Commissioner McHugh advised Representative Burnam that the Commission was pleased to take comments from him on this matter but could not discuss it further at this time as it was not posted as a specific agenda item.
- III. **Budget matters.** Tom Haas updated the Commission on the status of the Department's legislative budget request.
 - A. **Acceptance of donation of computer equipment from Criminal Information Sharing Alliance for use by CLE.** Marshall Caskey briefed the Commission on the proposed donation. Upon motion by Commissioner Holt and seconded by Commissioner Francis, the donation was accepted.

IV. Audit & Inspection Report. Farrell Walker gave the Audit & Inspection report. Upon motion by Commissioner Francis and seconded by Commissioner Holt, the attached Revised Internal Audit Plan for FY2003 was approved.

V. Division reports. Burt Christian gave the Administration Division report. There was some discussion on the sex offender database entry backlog, CHL processing, recruit schools and the building program. Randy Elliston gave the Traffic Law Enforcement Division report. There was some discussion on Capitol security, traffic stops, accident reconstruction teams and TLE drug interdictions. The Driver License Division report was given by Judy Brown. There was some discussion on a pilot project for Safety Responsibility compliance services at field offices, the CRIS project, automated call tracking mechanism project and expansion of online services. Marshall Caskey gave the Criminal Law Enforcement Division report. There was some discussion on the CODIS/DNA backlog, civil commitment sex offender program and national and domestic terrorism intelligence gathering. 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.

VI. For adoption.

- A. Proposed amendments to Rules 7.12 & 7.13, 37 TAC Secs. 7.12 & 7.13, relating to emergency management planning and preplanning requirements, as published in 28 TexReg 911, Jan. 31, 2003**
- B. Proposed amendments to Rule 7.27, 37 TAC Sec. 7.27, relating to emergency management operations, as published in 28 TexReg 911, Jan 31, 2003**
- C. Proposed amendment to Rule 18.1, 37 TAC Sec. 18.1, relating to Driver Training School testing and issuance of instruction permits, as published in 28 TexReg 912, Jan 31, 2003**

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

- D. 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, as published in 28 TexReg 913-916, Jan. 31, 2003**
- E. 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, as published in 28 TexReg 916-918, Jan. 31, 2003**

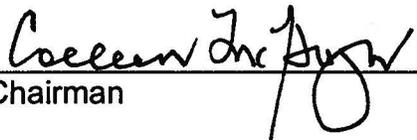
Frank Elder briefed the Commission on the above proposed amendments, repeals and new rules. Upon motion by Commissioner Francis and seconded by Commissioner

Holt, the attached amendments, repeals and new rules were unanimously approved for final adoption.

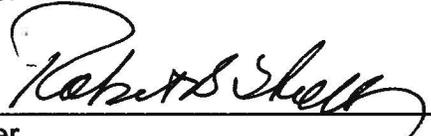
VII. Personnel matters, pending and contemplated litigation, ongoing criminal investigations, status of purchase of real property. The Commission went into Executive Session pursuant to Tex. Gov. Code Secs. 551.071, 551.074, 551.072 & 411.0041 to discuss personnel matters including Special Ranger and 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 personnel matters, pending and contemplated litigation and ongoing criminal investigations. The Commission had considered Special Ranger commissions for DPS retirees Paul M. Geiser, Dwayne L. Pruett, John C. Reed, Jr., and Lonnie R. Davis and a Special Texas Ranger commission for DPS retiree Donald K. Hammack. Upon motion by Commissioner Holt and seconded by Commissioner Francis, Special Ranger and Special Texas Ranger commissions were respectively approved for the above named individuals.

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

Read and approved this 24th day of June, 2003.



Chairman

Member


Member

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On May 20, 2003, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Emergency Management Planning and Preplanning Requirements
Title 37 T.A.C. Part I, Chapter 7
Subchapter B
Section Numbers 7.12 and 7.13

The Texas Department of Public Safety adopts amendments to Section 7.12, and Section 7.13, concerning Emergency Management Planning and Preplanning Requirements, without changes to the proposed text as published in the January 31, 2003, issue of the Texas Register (28 TexReg 911).

Amendment to Section 7.12 is necessary in order to require each local and interjurisdictional emergency management agency to submit to the Division of Emergency Management a copy of their local plan so that planning status may be tracked. Amendment to Section 7.13 is necessary because the Division of Emergency Management also administers a variety of grants from sources other than the Federal Emergency Management Administration.

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 departments work and Texas Government Code, Section 418.042, which requires the division of emergency management to prepare and keep current a comprehensive state emergency management plan.

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 May 20, 2003, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Emergency Management Operations
Title 37 T.A.C. Part I, Chapter 7
Subchapter C
Section Number 7.27

The Texas Department of Public Safety adopts amendments to Section 7.27, concerning Emergency Management Operations, without changes to the proposed text as published in the January 31, 2003, issue of the Texas Register (28 TexReg 911).

Amendments to the section are necessary in order to change the title to make it descriptive of content and also recognize the Governor's authority to recommend protective action for the public.

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 418.042, which requires the division of emergency management to prepare and keep current a comprehensive state emergency management plan.

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Colleen McHugh, Chairman
Public Safety Commission

21/22

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On May 20, 2003, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Driver Training School Testing and Issuance of Instruction Permits
Title 37 T.A.C. Part I, Chapter 18
Subchapter A
Section Number 18.1

The Texas Department of Public Safety adopts amendments to Section 18.1, concerning Driver Training School Testing and Issuance of Instruction Permits, without changes to the proposed text as published in the January 31, 2003, issue of the Texas Register (28 TexReg 912).

Amendments to the section are necessary in order to clarify the definition of the term "instructor" in the parent taught driver education program, to allow for military personnel and their spouses to be eligible to provide driver training to their children without holding a Texas driver license, and to add for the definition of the term "Texas Driver Education Certificate."

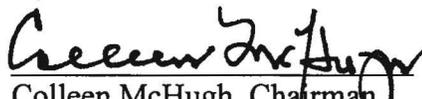
No comments were received regarding adoption of the amendments.

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



TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On May 20, 2003, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Parent Taught Driver Education
Title 37 T.A.C. Part I, Chapter 18
Subchapter B
Section Numbers 18.21 – 18.25

The Texas Department of Public Safety adopts amendments to Section 18.21, Section 18.22, and new Sections 18.23-18.25 concerning Parent Taught Driver Education. Amendment to Section 18.21 and new Sections 18.23-25 are adopted without changes to the proposed text as published in the January 31, 2003 issue of the *Texas Register* (28 TexReg 913). Amendment to Section 18.22 is adopted with changes and will be republished.

Amendments to the rules regarding the Parent-Taught Driver Education Program are necessary to align the department's program with the recent revisions to the Texas Education Agency (TEA) driver education requirements. With these amendments, the department has also addressed the changes to licensing individuals under 18 years of age brought about by the Graduated Driver Licensing (GDL) System implemented in January of 2002. Further, the department has reorganized and renumbered the rules in order to make them more understandable and easier to utilize by the general public.

Information was added to the instructions for obtaining the Parent-Taught materials to benefit those individuals considering initiating the program. Issues have been raised by parents who obtain the packet and begin instruction then are later denied credit due to ineligibility to teach the program. By adding to the rule that the department will not check the instructor's qualifications at the time of application to the program, the department seeks to eliminate some confusion and complaints. Information is also given to explain how and if portions of the instruction can be transferred, again in an attempt to provide information prior to submitting the application for the program.

Changes have been made to the classroom training subsection to address the department's change to a new module type instruction plan. This is in response to changes in course requirements by the Texas Education Agency that certifies all driver education courses. Additionally, TEA has developed a driver education program that can be obtained on their web site eliminating the need for a driver education textbook; therefore this requirement is removed from the rule.

A new Section 18.23 was created for the information regarding the application for the instruction permit. The information is currently part of the classroom training, but the department feels this information is substantial enough to warrant an individual section.

Section 18.24, Behind the Wheel Instruction has been renumbered to accommodate the new section created for the instruction permit.

New Section 18.25 provides information on obtaining the provisional license. The department feels that by creating a new section the information is more readily accessible by the public. The new section further addresses the new GDL requirements.

Written comments were received regarding the adoption of these amendments from Patrick L. Barrett, President, Driver Ed in a Box, LLC.

Pursuant to the comments received, the department has amended rule 18.22(b) to reflect the current TEA standard of 640 minutes of video.

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

Comment: Why must a parent purchase course 101?

Response: The department processes all requests for the parent taught driver education program by providing the parent taught packet. The packet includes all necessary forms, general information about the driver license application process, contact information regarding approved courses, and the core curriculum. The core curriculum establishes the minimum course requirements for this program. No changes were made as a result of this comment.

Comment: The statute does not require the department to provide a course curriculum - only to establish the standards.

Response: Transportation Code Section 521.205 requires the department to provide for the approval of driver education course materials that are at least equal to those approved by the Texas Education Agency. The statute does not prohibit the department from providing materials that meet this requirement. No changes were made as a result of this comment.

Comment: The department will incur additional costs at the local driver license offices to review material utilized under the department's 101 course.

Response: The proposed amendment requires the parent/instructor to present a written instructional outline or other satisfactory evidence that the TEA Instructional Modules were used for student instruction. This process is required of a parent who chooses not to purchase one of the commercial programs. The requirement allows the department employee an opportunity to determine if all elements of the TEA module curriculum were included during instruction. A tracking sheet is provided with the packet to help the instructor keep records of all instruction hours and topics. The department employee will be responsible for final review of the core requirements. The department will continue to utilize the instructor certification by which the instructor certifies that all requirements have been met. The department does not expect to incur additional costs associated with this review. No changes were made as a result of this comment.

Comment: Parents using course 101 are able to select their own materials. How does the department determine if the materials selected by the parents are approved?

Response: There is no statutory provision prohibition against the use of additional resource materials, regardless of which driver education program is selected by the parent. If the parent chooses to utilize course 101, they are provided the core TEA curriculum. The decision to use supplemental material is up to the instructor and the department is not required to review these additional materials. If the parent chooses to supplement the training with additional reference material, it is the parent's responsibility to ensure that the information is current.

MAR

The standard is different, however, for commercial course providers who wish to participate in the program. The course provider must have all materials included in their program approved by the department. This requirement is necessary to ensure that information an outside entity is selling to the participants meets the minimum standards of the program. No changes were made as a result of this comment.

Comment: The department should alter the packet and drop course 101 from the contents and bypass the registration process.

Response: The department does not currently have plans to eliminate course 101. However, the department, by utilizing the new TEA module instructional guide, will be offering a new course 101 upon implementation of these rules. We will continue to review the new program for further improvements.

The department also plans to continue following the procedures associated with the current application process. Providing the approved course and the driver education certificate, DE-964, is not a workable alternative. The DE-964 is utilized to provide the original driving permit. This form must be submitted with other required documentation, such as identification documents and verification of the social security number. The parent, as the instructor, is required to sign the certification and provide the necessary documentation. It is the department's opinion that tracking and maintaining the DE-964 in the appropriate driver license office is the most effective option for managing the parent taught program. No changes were made as a result of this comment.

Comment: The department is imposing more restrictive guidelines involving the use of videos for instruction.

Response: The department recognizes the validity of this comment and is amending rule 18.22(b) to reflect the current TEA standard of 640 minutes of video.

Comment: In rule 18.23, regarding the application for the instruction permit, only course 101 is mentioned.

Response: Course 101 is mentioned due to the requirement for the instructor to provide additional information regarding the lesson plan and curriculum. This is not required of the applicants who utilized one of the commercial instruction outlines. For courses 102 and 103, the department has previously reviewed the course materials and lesson plans and has determined that the required elements are addressed. An instructor utilizing course 101 must provide information to establish that instruction has been provided on all required elements. No changes were made as a result of this comment.

Comment: The department requires satisfactory evidence that the TEA instructional outlines or instructional modules were used for student instruction. What is "satisfactory evidence?"

Response: The instructor must provide thorough documentation that the instructional outlines or modules were used for student instruction. The department chose the general "satisfactory evidence" language to eliminate the need to have an exhaustive list of alternatives. Under this language, the instructor can provide lesson plans, course outlines, checklists, or other documented evidence. To be considered satisfactory, the documentation must show that all required elements were taught. No changes were made as a result of this comment.

MAA

Comment: Rule 18.23(10), other information as required by the department, is very open-ended and broad.

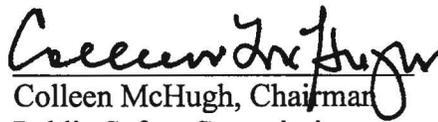
Response: In this rule, the department is providing information on the application for the instruction permit. Subsection (b)(10) relates to other rules and statutes that affect the license application, such as identification and social security number requirements. As requirements change, the department must place additional conditions on the applicant for an instruction permit. This subsection allows us to provide helpful information in this rule without restricting our ability to adapt to other statutory and rule requirement changes. No changes were made as a result of this comment.

The amendments and new sections 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

7/1/09

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On May 20, 2003, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Parent Taught Driver Education
Title 37 T.A.C. Part I, Chapter 18
Subchapter B
Section Numbers 18.23 and 18.24

The Texas Department of Public Safety adopts the repeal of Section 18.23 and Section 18.24, concerning Parent Taught Driver Education, without changes to the proposed text as published in the January 31, 2003, issue of the Texas Register (28 TexReg 916).

Repeal of the rules is necessary due to the reorganization of all rules regarding the Parent Taught Program. Section 18.23 is repealed and renumbered and Section 18.24 is repealed and placed in Section 18.1 regarding definitions.

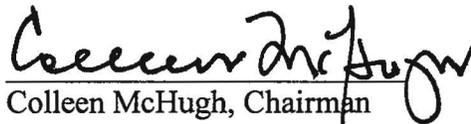
No comments were received regarding adoption of the repeals.

The repeals 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



TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On May 20, 2003, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Parent Taught Driver Education
Title 37 T.A.C. Part I, Chapter 18
Subchapter C
Section Numbers 18.31 – 18.33

The Texas Department of Public Safety adopts amendments to Section 18.31, Section 18.32, and new Section 18.33 concerning Parent Taught Driver Education. Section 18.31 is adopted without changes to the proposed text as published in the January 31, 2003 issue of the Texas Register (28 TexReg 916). Amendments to Section 18.32 and new Section 18.33 are adopted with changes and will be republished.

Amendments to the rules regarding the Parent-Taught Driver Education Program are necessary to align the department's program with the recent revisions to the Texas Education Agency driver education requirements. With these amendments, the department has also addressed the changes to licensing individuals under 18 years of age brought about by the Graduated Driver Licensing (GDL) System implemented in January of 2002. Further, the department has reorganized and renumbered the rules in order to make them more understandable and easier to utilize by the general public.

The department provides the new course requirements for the department's Parent-Taught program. This new program adopts by reference the driver education course approved and utilized by the Texas Education Agency.

Changes are made to the process of approval for courses utilized in the Parent-Taught program. The changes regard how and when information will be updated in the packet provided to all applicants. The changes also address the department's authority to require a previously approved course to resubmit information for reapproval if needed due to changes in state law, TEA requirements or administrative rules. Guidelines are established to give the entity time to address the issues and submit information to the department for reapproval. Failure to submit the requested information will result in the cancellation of the course approval.

The department provides information regarding when cancellation of approval will be authorized. Currently the statute requires the courses to be approved by the department. Through this requirement the department has statutory authority to provide approval; therefore, it also has authority to cancel that approval. New section 18.33 states the reason for which the department will cancel approval.

Written comments were received regarding the adoption of these amendments from Patrick L. Barrett, President, Driver Ed in a Box, LLC.

Pursuant to the comments received, the department has amended rule 18.32(d) by replacing the word "subsequent" with "substantive." The department is also amending rule 18.33 by allowing the course provider the opportunity to address and correct issues prior to cancellation.

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

Comment: Does rule 18.32(d) allow for minor changes in course materials without pre-approval?

MAC

Response: In an attempt to stay fully apprised of the information being offered by an approved course, the department feels it is necessary that changes to the curriculum or materials be submitted for review and approval. However, the department agrees that minor changes that do not effect the substantive text or curriculum requirements do not require pre-approval. Therefore, the department is amending the rule to use the term "substantive" instead of "subsequent."

Comment: The department should set a specific time period for the review of course materials. A period of ten days would be preferred.

Response: The department is unable to provide one specific time period which would encompass the review process as a whole. A period of ten days, as suggested by the comment, although not sufficient to review an entire course curriculum, would be adequate to review a minor change. A "timely review" ensures that proposed changes are reviewed effectively and efficiently, without the need for establishing narrow time constraints. No changes were made as a result of this comment.

Comments: The provisions of rule 18.33 that allow the department to cancel course approval do not allow for due process.

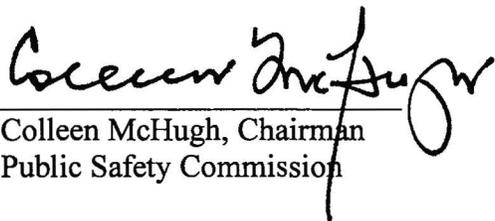
Response: The department feels it is necessary to maintain the authority to withdraw approval if it determines that required TEA standards are not met or additional information is provided in the course curriculum that was not included in the initial review process. However, it will certainly be in the best interest of the program to allow the course provider the opportunity to respond and make any needed changes prior to a final determination. Therefore, the department has amended the rule to reflect this 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 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

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TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On May 20, 2003, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Department Approved Driver Education Courses
Title 37 T.A.C. Part I, Chapter 18
Subchapter C
Section Number 18.33

The Texas Department of Public Safety adopts the repeal of Section 18.33, concerning Department Approved Driver Education Courses, without changes to the proposed text at published in the January 31, 2003, issue of the Texas Register (28 TexReg 917).

Repeal of the rule is necessary due to the lack of statutory authority to establish an appeal process for decisions regarding the Parent Taught Program.

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 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.

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Colleen McHugh, Chairman
Public Safety Commission

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