

MINUTES
PUBLIC SAFETY COMMISSION
March 3, 2006
Austin, Texas

The Public Safety Commission met in Austin, Texas on March 3, 2006. Attending the meeting were Chairman Ernest Angelo, Jr., and Commissioner Carlos Cascos.

DPS Staff members present:

Tommy Davis, Director
David McEathron, Assistant Director
Oscar Ybarra, Tom Haas & Karen Elliston, Accounting & Budget Control
Randy Elliston, Lamar Beckworth, Mark Rogers, Randall Beaty, Martin Simon, Texas Highway Patrol Division
Kent Mawyer, Gary Stone & James Brubaker, Criminal Law Enforcement
Burt Christian, Lester Mills, Scot Houghton, Administration
Judy Brown, Bob Burroughs & Greg Gloria, Driver License
Ray Coffman, Texas Rangers
Farrell Walker & Jude Schexnyder, Office of Audit & Inspection
Jack Colley, Emergency Management Division
Mary Ann Courter, General Counsel
Ed Kelly, Information Management Service
Tela Mange, Public Information Office
David Outon, Internal Affairs
Jack Reichert, Aircraft
Michael Kelley, Legislative Liaison
Dorothy Wright, Secretary

Guests present:

Mike McElhaney, Governor's Office
Tony Plohetski, Austin American Statesman
Brian Braden, Angelo State University
Mike Stiernberg, State Auditor's Office
Nolan Lujan, Brackenridge Hospital
Phil Burleson, Jr., Attorney
Christy Carty

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

- I. **Minutes.** Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, the minutes of the December 7, 2005 meeting were approved.
- II. **Public comment.** There was no public comment.

- III. **Consultant report on Active Countermeasures Training Program.** Drs. Richard Miller and Fabrice Czarnacki gave the Commission an overview of their review of the DPS active countermeasures training program. There was some discussion on the evaluation report and specific recommendations. Colonel Davis advised the Commission we would look into each recommendation and report back to them on which of those recommendations will be implemented.
- IV. **Budget matters.** Oscar Ybarra gave the budget report. There was some discussion on DPS's waiver request for legislatively mandated FTE reductions, exceptional items for 2008-2009, vacancies and gasoline prices.
 - A. **Acceptance of donation of Vehicle Tracking System from the Department of the Army.** Kent Mawyer briefed the Commission on the proposed donation. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, the Vehicle Tracking System was accepted for use by the Narcotics Service.
 - B. **Acceptance of donation of 2 control radio stations & associated equipment from the Federal Bureau of Investigation.** Burt Christian briefed the Commission on the proposed donation. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, the control radio stations were accepted for use by DPS.
 - C. **Approval of purchase using seized funds.** Jack Reichert briefed the Commission on the proposed FLIR purchase. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, the purchase was approved subject to proper purchasing procedures.
- V. **Audit & Inspection report.** Farrell Walker gave the audit & inspection report.
- VI. **Division reports.** Burt Christian gave the Administration Division report. There was some discussion on the ongoing physical fitness consultant review and building projects. Colonel Davis advised the Commission that DPS had been given a Patriotic Employer Award by the Department of Defense. There was some discussion on means taken by the Department to stay in contact with the families of and our employees who have been militarily deployed overseas. The Texas Highway Patrol Division report was given by Randy Elliston. There was some discussion on recent trooper injuries and deaths, stolen vehicle recoveries, drug seizures, drug interdiction efforts and the status of the Anheuser Busch billboard campaign. Judy Brown gave the Driver License Division report. There was some discussion on the DL reengineering project, the ongoing online media campaign, the impact of the Real ID Act and the driver responsibility program surcharge fee collections. Bob Burroughs gave an update on the Driver Responsibility Program. Jack Colley gave the Emergency Management Division report. There was some discussion on ongoing assistance by DPS to Hurricanes Rita & Katrina evacuees, wildfire operations, a request for homeland defense security funds, and the status of recommendations by the Governor's Evacuation Transportation & Logistics Task Force. The Criminal Law Enforcement Division report was given by Kent Mawyer. There was some discussion on ongoing border enforcement activities and specific interest aliens. Ray Coffman gave the Ranger Division report. The Information Management Service report was given by Ed Kelly.

VII. For publication for public comment.

- A. Proposed new Rule 1.60, 37 TAC Sec. 1.60, relating to public information policies and the release of investigative reports to parents or guardians alleged to have been abused or neglected.** Mary Ann Courter briefed the Commission on the proposed new rule. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, the attached rule was unanimously approved for publication for public comment.
- B. Proposed amendment to Rule 4.36, 37 TAC Sec. 4.36, relating to Commercial Motor Vehicle Compulsory Inspection Program.** Mark Rogers briefed the Commission on the proposed amendment. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, the attached amendment was unanimously approved for publication for public comment.
- C. Proposed new Rules 5.51-5.70, 37 TAC Secs. 5.51-5.70, relating to implementation of multi-county drug task forces.** James Brubaker briefed the Commission on the proposed new rules. There was some discussion on the proposed rules. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, the attached rules were unanimously approved for publication for public comment.
- D. Proposed amendment to Rule 15.89, 37 TAC Sec. 15.89, relating to violations assessed points and surcharges under the Driver Responsibility Program.** Bob Burroughs briefed the Commission on the proposed amendment. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, the attached amendment was unanimously approved for publication for public comment.

VIII. For adoption.

- A. Proposed amendment to Rule 15.24, 37 TAC Sec. 15.24, relating to applicants providing proof of identity to obtain a driver license or identification certificate, as published in 30 TexReg 7852, Nov. 25, 2005.** Mary Ann Courter briefed the Commission on the proposed amendment. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, the attached amendment was unanimously approved for final adoption.
- B. Repeal of existing Rules 19.1-19.7, 37 TAC Secs. 19.1-19.7; proposed New Rules 19.1-19.7, 37 TAC Secs. 19.1-19.7, relating to Breath Alcohol Testing Regulations, as published in 30 TexReg 5729, Sept. 9, 2005.** Mary Ann Courter briefed the Commission on the proposed repeal & new rules. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, the attached repeal & new rules were unanimously approved for final adoption with the noted changes.
- C. Proposed New Rule 19.8, 37 TAC Sec. 19.8, relating to Breath Alcohol Testing Regulations, as published in 30 TexReg 8827, Dec. 30, 2005.** Mary Ann Courter briefed the Commission on the proposed new rule. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, the attached rule was unanimously approved for final adoption with the noted changes.
- D. Proposed amendments to Rules 19.21-19.29, 37 TAC Secs. 19.21-19.29, relating to Texas Ignition Interlock Device Regulations, as published in 30 TexReg 5735,**

- D. Proposed amendments to Rules 19.21-19.29, 37 TAC Secs. 19.21-19.29, relating to Texas Ignition Interlock Device Regulations, as published in 30 TexReg 5735, Sept. 9, 2005.** Martin Simon briefed the Commission on the proposed amendments. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, the attached amendments were unanimously approved for publication *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, 551.072 & 411.0041 to discuss personnel matters, including the Director's action of discharging DPS employee Eric Cullop and probationary employees Debra Hutchinson, Blas A. Barrera & Juanita Bradley; pending and contemplated litigation; status of purchase of real property; and ongoing criminal investigations. Upon reconvening Regular Session, Commissioner Angelo announced that the Commission had discussed personnel matters, pending and contemplated litigation and ongoing criminal investigations. Special Ranger commissions had been considered for DPS retirees Larry Donaldson, Rogelio Escaname, Donald Jones, Santiago Robles and Charles D. Thomas. A motion was made by Commissioner Cascos and seconded by Commissioner Angelo approving the above named individuals as Special Rangers. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, the Director's action of discharging probationary employees Debra Hutchinson, Blas A. Barrera and Juanita Bradley was affirmed (see attached Order). Commissioner Angelo made a motion to affirm the Director's action of discharging Eric Cullop. The motion was seconded by Commissioner Cascos and unanimously approved (see attached Order).

A motion was made by Commissioner Cascos and seconded by Commissioner Angelo adjourning the meeting.

Read and approved this 19th day of April, 2006.

Ernest Angelo Jr.
Chairman
Charles H. Cascos
Member

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On March 3, 2006, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Driver License Rules
Title 37 T.A.C. Part I, Chapter 15
Subchapter B
Section Number 15.24

The Texas Department of Public Safety adopts amendments to Section 15.24, concerning Identification of Applicants, without changes to the proposed text as published in the November 25, 2005, issue of the Texas Register (30 TexReg 7852).

Adoption of the amendments is necessary due to the passage of House Bill 967 during the 79th Legislature, Regular Session. House Bill 967 amended Texas Transportation Code, Section 521.142 and Section 522.021 to require the department to accept an offender identification card or similar form of identification issued to an inmate by the Texas Department of Criminal Justice (TDCJ) as satisfactory proof of identity for the issuance of a driver license, commercial driver license or identification certificate.

In the United States, the driver license is the preferred form of personal identification for an overwhelming majority of the population. It is utilized to conduct virtually all types of business transactions as well as to travel. Businesses, government agencies and law enforcement personnel rely on the accuracy of the information contained in the driver license and many times do not have the opportunity or authority to require additional proof of a person's identity.

As reliance on the driver license for identification purposes has expanded, it has become increasingly susceptible to use in the commission of fraud and other criminal activity. The department must continue to take all reasonable steps to ensure the integrity of the driver license and the agency has limited the type of documentation acceptable as proof of identity to items that can be verified by the issuing entity.

According to TDCJ, the offender identification card was initially designed for internal use during the person's incarceration and the identifying information on the card is based solely on the judgment record received from the convicting court. However, the judgment record may not always be accurate and could contain aliases, incomplete names and/or incorrect dates of birth. TDCJ does not utilize other sources to verify or update the identification information, as the document was never intended for external use. It is not anticipated that TDCJ will modify its existing procedures in order to improve the accuracy of the card. As such, the department has determined that it is appropriate to categorize the offender identification card as supporting identification.

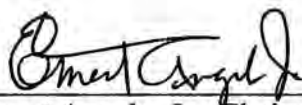
No comments were received regarding adoption of the amendments.

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.


Ernest Angelo, Jr., Chairman
Public Safety Commission

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TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On March 3, 2006, 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 Numbers 19.1 – 19.7

The Texas Department of Public Safety adopts the repeal of Sections 19.1-19.7, concerning Breath Alcohol Testing Regulations, without changes to the proposed text as published in the September 9, 2005, issue of the Texas Register (30 TexReg 5729).

Repeal of the sections is necessary due to substantial revisions having been made. Adoption of the repeal is filed simultaneously with the adoption of new Sections 19.1-19.7 which will simplify and clarify language for ease of reading and understanding of the Breath Alcohol Testing Regulations.

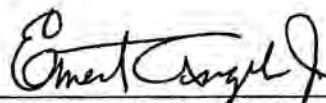
No comments were received regarding adoption of the repeals.

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 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.


Ernest Angelo, Jr., Chairman
Public Safety Commission

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TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On March 3, 2006, 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 Numbers 19.1 – 19.7

The Texas Department of Public Safety adopts new Sections 19.1-19.7, concerning Breath Alcohol Testing Regulations. Sections 19.4-19.7 are adopted with changes to the proposed text as published in the September 9, 2005, issue of the Texas Register (30 TexReg 5729) and will be republished. Sections 19.1-19.3 are adopted without changes and will not be republished. The repeals of existing Sections 19.1-19.7, which the new sections replace, are contemporaneously adopted in this issue of the Texas Register.

Adoption of the new sections is necessary in order to bring 37 TAC Sections 19.1-19.7 in line with accepted standards for drafting administrative rules and to simplify and clarify language for ease of reading and understanding of the Breath Alcohol Testing Regulations.

New Section 19.1 provides for definitions for the proposed rules. New Section 19.2 outlines the guidelines for certification of instruments by the scientific director. New Section 19.3 allows the scientific director the flexibility to incorporate evolving technology into testing methodology when deemed appropriate. New Section 19.4 adds language streamlining the business process used to insure breath testing is conducted in accordance with the methods approved by the scientific director. New Section 19.5 addresses the various aspects of certification provisions. Additionally, a deficiency in the renewal of certification process created by a previous revision was addressed to establish consistency with other operator certification standards. New Section 19.6 addresses various aspects of certification provisions. A provision for expiration of certification as well as renewal and recertification was added. New Section 19.7 also addresses various aspects of certification provisions. Course curriculum is clarified to more closely agree with modern training methods.

The department accepted comment on the proposed rules through October 9, 2005. Written comments were submitted by Rafe Harshberger, a retired Abilene Police Department Sergeant and currently certified Technical Supervisor. The department also received correspondence both telephonically and in person from several Technical Supervisors.

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

COMMENT: The notice bars certification as an operator or technical supervisor for individuals with certain conviction histories. The commenter points out that individuals seeking such certification should be held to the same standards as those seeking TCLEOSE certification as a peace officer.

RESPONSE: The department agrees with the comment and has amended language in sections 19.5(a)(2) and 19.6(b)(6) dealing with conviction history of individuals seeking certification as an operator or technical supervisor to more closely agree with that of TCLEOSE standards for peace officer certification.

COMMENT: 19.6(b)(5) and 19.6(c)(2) reference “certified program” and “certified school of instruction” whereas elsewhere in the title the reference is “approved program” or “approved school of instruction”.

RESPONSE: The department agrees with the comment and has amended language in 19.6(b)(5) and 19.6(c)(2) to make it consistent with the remainder of the title.

COMMENT: 19.6(a)(5) references “testing location” whereas 19.1(22) in the definitions refers to “site location” as the physical site of the breath testing equipment.

RESPONSE: The department agrees with the comment and offers amended language in 19.6(a)(5) to agree with that in 19.1(22).

COMMENT: 19.4(b) references “an agency or laboratory” and subsequent references to the same entity within 19.4 reference only “an agency”.

RESPONSE: The department agrees with the comment and offers amended language in 19.4 to create consistency for each reference to “an agency or laboratory”.

COMMENT: The proposed revision to 37 TAC 19.1- 19.7 lacks a preservation clause which was contained in the current title 19.7 Explanation of Terms and Actions

RESPONSE: The department agrees with the comment and is simultaneously adopting new Section 19.8 which it proposed in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8827). New Section 19.8 offers the necessary language which was inadvertently omitted.

COMMENT: 19.6(c)(1) refers to examination for renewal of certification as a technical supervisor while 19.6(e) grants the scientific director the authority to determine requirements for renewal of certification.

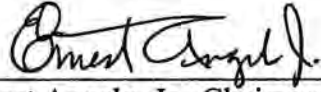
RESPONSE: The department agrees the wording creates an ambiguity and deletes the phrase “or until the next examination for renewal” from 19.6(c)(1).

The 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 724.016, which authorizes the department to adopt rules regarding breath specimen analytical methods and qualifications of individuals performing the analyses.

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.



Ernest Angelo, Jr., Chairman
Public Safety Commission

MCA

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On March 3, 2006, 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 19.8

The Texas Department of Public Safety adopts new Section 19.8, concerning Breath Alcohol Testing Regulations, without changes to the proposed text as published in the December 30, 2005, issue of the Texas Register (30 TexReg 8827).

In the September 9, 2005, issue of the Texas Register (30 TexReg 5729) the department proposed the repeal and concurrent adoption of new Sections 19.1-19.7 in order to bring the rules in line with accepted standards for drafting administrative rules and to simplify and clarify language for ease of reading and understanding of the Breath Alcohol Testing Regulations. In doing so, the department inadvertently left out a necessary preservation clause which was contained in the rules. The adoption of new Section 19.8 is necessary in order to offer the necessary language which was inadvertently omitted.

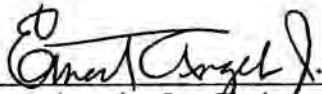
No comments were received regarding adoption of the new section.

The new section 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 724.016, which authorizes the department to adopt rules regarding breath specimen analytical methods and qualifications of individuals performing the analyses.

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.


Ernest Angelo, Jr., Chairman
Public Safety Commission

MOA

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On March 3, 2006, 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 B
Section Numbers 19.21 – 19.29

The Texas Department of Public Safety adopts amendments to Sections 19.21 – 19.29, concerning Texas Ignition Interlock Device Regulations. Sections 19.26, 19.28, and 19.29 are adopted without changes as published in the September 9, 2005 issue of the Texas Register (30 TexReg 5735) and will not be republished. Sections 19.21-19.25 and 19.27 are adopted with changes and will be republished.

Adoption of the amendments is necessary in order to have all explanations of terms and actions in Section 19.21 displayed in like style. Presently many of the definitions are entirely too informational and procedural. Therefore, the excessive substantive wording in those definitions was removed and relocated to the appropriate location(s) in the remainder of the sections. Additional concerns since the last amendment of these regulations have also prompted amendments to be incorporated, which will clarify and/or make more flexible the department's position on certain issues.

The amendment to Section 19.22 increases the device approval processing fee from fifty (\$50) dollars to five hundred (\$500) dollars due to the prolonged and complex evaluation procedures necessary to ensure the device meets the technical requirements of these regulations. The section is also amended to limit the number of devices a manufacturer may have on the approved list in order to increase the effectiveness of the department's oversight of the industry and to encourage the most updated technology in device design.

The amendment to Section 19.23 addresses the issue of only one rolling retest violation (for failure to deliver it) being recorded even if the vehicle was driven for an extended period of time after the initial failure to deliver the rolling retest sample. The issue was addressed by requiring subsequent retests at required intervals and recording violations until the test is delivered or the engine is turned off.

The amendment to Section 19.24 requires the service center and the ignition interlock device to be utilizing the latest version of the manufacturer's software and to notify the department of software changes. In addition, the amendment requires the manufacturer as well as the service center to maintain customer records and make same available upon request.

The amendment to Section 19.25 clarifies the definition of calibration confirmation test and requires the vendor's software be capable of performing, documenting and reporting the result of this test. The amendment also clarifies the protocol to be followed should a service center go out of business.

The amendment to Section 19.26 outlines the specific protocol wherein a manufacturer could appeal the denial or withdrawal of approval of a device. Current wording only speaks to the fact that denial or withdrawal of approval can be appealed, and no protocol is specified.

The amendment to Section 19.27 requires a designated waiting area so that a customer cannot witness the installation of the device. The department is requiring the vendor software to document the representative performing the monitor check and when it is performed. A major revision added to this section addresses device removal. The amendment further establishes the specific protocol by which the service center could appeal the denial, suspension or revocation of certification.

The amendment to Section 19.28 gives the inspector the right to require a service representative to demonstrate competency to perform any/all aspects of their job responsibilities that are required by regulation. Also established in this section is the specific protocol by which the service representative can appeal the denial or suspension of certification.

The amendment to Section 19.29 established the specific protocol by which an inspector can appeal the denial or suspension of certification.

The department accepted comment on the proposed rules through October 9, 2005. Written comments were submitted by Richard Freund representing Lifesafer Interlock, Inc.; Scott Elting representing Draeger Safety Diagnostics, Inc.; Jim Ballard representing Smart Start; and Andi Haa representing Guardian Interlock.

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

COMMENT: Regarding Section 19.21(27). Andi Haa comments "Martin, this one concerns me. I believe we need to provide two definitions: One would be for a Temporary Lockout and the other Permanent Lockout." In addition, Ms. Haa also suggested additional minor changes to Section 19.21 definitions.

DEPARTMENT RESPONSE: The department agrees. This term will be deleted and we will have separate definitions for temporary and permanent lockout. This will cause a renumbering of the definitions. In addition, the department agrees with Ms. Haa and has made additional nonsubstantive changes to the definitions section for clarification purposes.

COMMENT: Regarding Section 19.25(e). Ms. Haa states "Martin, it really seems this discussion would be better placed in a different section."

DEPARTMENT RESPONSE: The department agrees with the comment. Therefore, 19.25(e) is deleted and moved to Section 19.27(h). Accordingly, the current 19.27(h) now becomes 19.27(i), the current 19.27(i) becomes 19.27(j), and the current 19.27(j) becomes 19.27(k).

COMMENT: Regarding Section 19.23(f). Refusal of any rolling retest requested after sufficient time as determined by the department shall result in a violation being recorded in the data storage system and cause the IID to continue to request a rolling retest or to request a subsequent rolling retest at least every ten minutes until a test is recorded and passed or the engine turned

off. Continued refusals shall result in additional violations being recorded in the data storage system or documented in any report generated from the data storage system whenever a Violation Reset occurs.

"I believe the additional language allows the spirit of what the department has expressed its concern about a loophole that it wants to close; it wants appropriate jurisdictional authorities to be made fully aware and notified if an individual continues to operate or idle a vehicle for significant lengths of time after ignoring a rolling retest and that sanctions are still imposed to thwart such evasion. Additionally, as jurisdictions have adopted use of interlock and the technology has advanced the trend is to allow users fewer not more violations before a violation reset. The technology can now also be customized to trigger a violation reset for specific types and numbers of violations. And lastly, as the efficacy and importance of the rolling retest and the ease of passing the retest has been clearly demonstrated the refusal or failure to pass the retest is viewed by jurisdictions primarily as offender non-compliance and a training issue at worst. Early Recall for additional instruction or to push the offender into compliance is not viewed as a significant and unwarranted intervention via the public safety issues of allowing repeat DUI offenders the opportunity to flout the IID and drive intoxicated and unsafely."

DEPARTMENT RESPONSE: Since different vendors have different protocol in the way they handle the refusal of the rolling retest, the revision as proposed by the department will make reporting those refusals uniform throughout the industry. Furthermore, future concepts of reporting cumulative numbers of violations would be compromised if this revision was not implemented as proposed. Although some vendors may have to implement varying degrees of software/firmware changes to accomplish this revision, sufficient time will be allowed by the department for all vendors to satisfactorily comply.

We do make a change in one sentence in 19.23(f) which results in another sentence being added.

Current wording: Refusal of any rolling retest requested after a sufficient time as determined by the department shall result in a violation being recorded in the data storage system and cause the IID to request a subsequent rolling retest at least every 10 minutes until a test is recorded or the engine is turned off.

New wording: Refusal of any rolling retest ~~requested after a sufficient time as determined by the department~~ shall result in a violation being recorded in the data storage system. After recording the violation, the IID shall immediately request another rolling retest. ~~and cause the IID to request a subsequent rolling retest at least every 10 minutes until a test is recorded or the engine is turned off.~~

COMMENT: Regarding Section 19.24(b)(4). The device and the service center shall utilize the most current version of the manufacturer's software and firmware to ensure compliance with these regulations. The manufacturer's software and firmware shall not allow a certified service representative or service center to disengage or modify the technical and operating features of a device in such a way as to not uphold the scientific integrity of the device to which it is certified and approved under these regulations, as determined by the

department. A reasonable time as determined by the department will be granted if changes to these regulations require manufacturers to upgrade and/or revise their software and/or firmware.

“This is an outstanding issue in many jurisdictions being practiced by a few interlock manufacturers and actually to the point of being marketed by them to the offenders who want to keep drinking and driving as a competitive advantage to the disadvantage of IID providers who live by and follow the rules. It amounts to complete and utter fraud and debasement for an effective interlock program. A message needs to be sent loud and clear that such behavior will no longer be tolerated in the biggest IID state.”

DEPARTMENT RESPONSE: The department agrees that the additional point being made is a possibility and we insert the following verbiage in lieu of the suggested wording:

The manufacturer’s software and/or firmware shall require certain settings and operational features of the device including, but not limited to, sample delivery requirements, startup and retest set points, free restart, rolling retest requirements, violation settings and lockout conditions. The manufacturer’s software and/or firmware shall not allow modification of certain settings and operational features of the device by the service center or the service representative unless the modification is approved by the appropriate judicial authority or the department.

COMMENT: Regarding Section 19.28(a)(3), Mr. Freund suggested the following alternate wording: “An applicant who has been convicted of driving while intoxicated, theft, a crime involving moral turpitude, or any offense classified as a felony, within five years prior to the date of the filing of the applicant’s application for certification as an IID service representative may be denied eligibility for certification, at the sole discretion of the department. For purposes of this section, a conviction means the applicant was adjudicated guilty by a court of competent jurisdiction.”

“I would hope the door could be left open for the department to take into consideration an individual who may have had extenuating circumstances, made restitution or can demonstrate rehabilitation for a mistake, very bad decision or choice in their past.”

DEPARTMENT RESPONSE: The department feels this rule should not be left to discretion and therefore the wording will remain intact. We feel the industry should take all necessary steps to ensure compliance with this rule prior to employment of the service representative. Therefore, no change was made to the rule based on this comment.

COMMENT: Regarding Section 19.27. “In regards to the proposed changes to the Ignition Interlock Device Regulations, every thing looks good to me. The only problematic area for me was section 19.27(c)(7)(C)....

I believe that the responsibility of obtaining removal authorization should fall on the client for several reasons:

1. The client would be the one initiating the change so they should do the foot work on the paperwork.

2. The vendor loosing a paying client may not be motivated to do this.

Other than that, I really like this particular reg. I believe it should just be reworded slightly to:

‘When a customer desires to change from one vendor to another, it shall be the responsibility of the customer to obtain removal authorization...’”

DEPARTMENT RESPONSE: Since some confusion exists as to the original installing vendor’s responsibility in the protocol for a customer desiring to change vendors, we changed the proposed wording of the first sentence in 19.27(c)(7)(C) to read:

When a customer desires to change from one vendor to another, it shall be the responsibility of the original installing vendor to ensure~~obtain~~ removal authorization has been issued by~~from~~ the appropriate judicial authority.

We feel this change in wording removes any conceived responsibility on the part of a vendor to have to be the facilitator for the customer’s desire to change in the first place.

COMMENT: Regarding Section 19.21(18). “Smart Start strongly believes that a ‘spontaneous’ bypass switch is a time bomb waiting to happen. We have had much experience with such a system years ago and once the user figures out the switch is there, they use it when they are intoxicated. This allows an easy defeat of the interlock and calls the program into serious question. Please consider changing the definition to preclude a ‘spontaneous’ switch. By that, we mean that the user should not be able to override a device without at least calling the provider for a code to enter.

Regarding Section 19.21(43) suggest adding the word ‘defeat’ after disable to strengthen this definition.”

DEPARTMENT RESPONSE: Regarding Section 19.21(18), the department feels every vendor’s bypass protocol should be evaluated. Since this revision only addressed the substantive wording of the definition itself, and since the comment requires detailed study not yet done, we will keep the proposed wording as is and will address this issue in the future if warranted. Therefore, no change was made to the rule based on this comment.

Regarding Section 19.21(43), the department is not opposed to adding the word “defeat” to this definition and will therefore amend the sentence.

COMMENT: Regarding Section 19.22(d)(3). “Smart Start understands the verbiage says that the department ‘may’ limit the number of devices a manufacturer has on the approved list. We discussed this at this year’s annual review in Austin. I just want to reiterate that having to replace existing units to a new and improved product would be financially prohibitive. Smart Start is currently working on a new unit, unrelated to our current ssi-1000. We plan on introducing this product first in Texas but it would not make financial sense to change out the existing clients who are using our SSI-1000. I know the regulations say ‘may’ and not ‘shall’ but I wanted to make sure I had a chance to speak on the topic one more time.”

DEPARTMENT RESPONSE: The department is not opposed to deleting the first sentence in Section 19.22(d)(3) thereby deleting any verbiage which states "the department may limit the number of devices..."

COMMENT: Regarding Section 19.27(c)(6). "Please consider removing the requirement to notify the courts when a user, other than the interlock customer, returns the vehicle for service. This is will only provide more reports for the courts but will not strengthen the program in anyway."

DEPARTMENT RESPONSE: The department feels this is important information for the appropriate judicial authority to use as it sees fit and therefore the requirement will remain. Therefore, no change was made to the rule based on this comment.

COMMENT: Regarding Section 19.27(c)(7)(B) and (c)(7)(C). "By restricting a provider from removing another provider's device, you are restricting the freedom of the customer to choose and change providers. An unhappy customer should have the ability to leave a vendor and install elsewhere but the regs make that procedurally difficult and thus you have eliminated the customer's freedom of choice. This appears to limit the way that a company can compete and gain an advantage by offering superior customer service and as such, it would appear to be outside the scope of DPS. I would suggest you require the removing company to return the device to the customer, who is ultimately held responsible by the courts and the other provider. Or allow for the competing company to remove the device only after calling the competitor and arranging for an overnight mailing of the device back to the appropriate authority."

DEPARTMENT RESPONSE: Regarding 7 (B) & (C), the department disagrees with these comments. We feel the protocol outlined is necessary to protect the data, the device itself (customers/vendors might not always return devices), and proper communication between customer and appropriate judicial authority. We are in no way restricting the customer's freedom to change vendors, but rather we are outlining a necessary sequence of events for the change to take place.

COMMENT: Regarding Section 19.27(h)(3) and (4). "Please include a provision to notify the manufacturer AND the service provider, via a written document such as a letter or email that there is a pending suspension or that a suspension has been given. I know that you would normally do this, but I would like the regulations to require DPS to provide such notification. Without it, it is possible that a remote service provider may be suspended and they may never let the manufacturer know of the suspension which would prevent the manufacturer from dealing with the provider and correcting the issue.

DEPARTMENT RESPONSE: The department is not opposed to also notifying the manufacturer when a service center has been suspended or revoked. For clarification purposes, our prior response to another vendor comment has resulted in renumbering this section and therefore your (h)(3) and (4) now becomes (i)(3) and (4). Therefore, the wording in (i)(3) reads "the manufacturer and appropriate judicial authority shall be notified when a service center is suspended" and the wording in (i)(4) reads "the manufacturer and appropriate judicial authorities shall be notified when a service center is revoked."

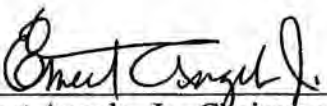
The amendments are adopted pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the

department's work; Texas Transportation Code, Section 521.2476, which requires the department to establish minimum standards for vendors of Ignition Interlock devices; and Section 521.247 which states the manufacturer shall reimburse the department for any cost incurred in approving the device.

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.


Ernest Angelo, Jr., Chairman
Public Safety Commission



IN THE MATTER OF § BEFORE THE

THE DISCHARGE OF § PUBLIC SAFETY COMMISSION

PROBATIONARY EMPLOYEES § IN AUSTIN, TRAVIS COUNTY, TX

Advice and Consent

In accordance with Government Code Section 411.007(f), the Director found that the following named probationary employees were unsuitable for continued employment in the Department of Public Safety. The Public Safety Commission has consented to the discharge of these employees:

Employee Name	Employee Title/Division	Date of Discharge
Debra Hutchinson	Fingerprint Technician/Administration Division	12/16/2005
Blas A. Barrera	Probationary Trooper/Highway Patrol Division	02/02/2006
Juanita Bradley	Clerk III/Driver License Division	02/13/2006

Approved:

Ernest August J.

Ernest Angelo, Jr., Chairman
Public Safety Commission
Date: March 3, 2006

[Signature]

IN THE MATTER OF

THE APPEAL OF DISCHARGE OF

ERIC CULLOP

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BEFORE THE

PUBLIC SAFETY COMMISSION

IN AUSTIN, TRAVIS COUNTY, TX

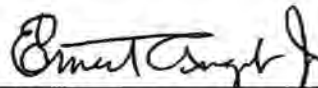
ORDER

BE IT REMEMBERED that the Public Safety Commission convened to hear the appeal of discharge of Eric Cullop, on the 7th day of December, 2005. Mr. Cullop received adequate notice of the hearing on this matter and did appear in person and through counsel. 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 that there is just cause to discharge Eric Cullop and affirms the Director's decision in this matter.

On motion of Comm. Angelo, seconded by Comm. Cascoe, the discharge was affirmed.

ENTERED AND SIGNED on the 3rd day of March, 2006.



Ernest Angelo, Jr., Chairman
Public Safety Commission

