

**MINUTES**  
**PUBLIC SAFETY COMMISSION**  
**May 19, 2005**  
**Austin, Texas**

The Public Safety Commission met in Austin, Texas on May 19, 2005. Attending the meeting were Chairman Colleen McHugh and Commissioners Carlos Cascos and Ernest Angelo, Jr.

**DPS Staff members present:**

Tommy Davis, Director  
David McEathron, Assistant Director  
Oscar Ybarra, Accounting & Budget Control  
Randy Elliston & Bob Burroughs, Highway Patrol Division  
Gary Stone, Criminal Law Enforcement  
Burt Christian, Administration  
Judy Brown, Greg Gloria & Linda Boline, Driver License  
Earl Pearson, Ray Coffman & Gerardo De Los Santos, Texas Rangers  
Farrell Walker & Randy Prince, Office of Audit & Inspection  
Mary Ann Courter, General Counsel  
Bryan Lane, Information Management Service  
David Outon, Internal Affairs  
Tela Mange, Public Information Office  
Steve Powell, Aircraft  
Dorothy Wright, Secretary

No guests were present.

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

- I. **Minutes.** Upon motion by Commissioner Angelo and seconded by Commissioner Cascos, the minutes of the April 15, 2005 meeting were approved.
- II. **Public comment.** There was no public comment.
- III. **Discharge appeal hearing of DPS employee Terry Cooley.** Terry Cooley nor anyone on his behalf was present. Mary Ann Courter advised the Commission proper notification of the hearing had been sent to Mr. Cooley's attorney. A motion was made by Commissioner Cascos, seconded by Commissioner Angelo and unanimously passed affirming the Director's discharge of Terry Cooley (see attached Order).
- IV. **Budget matters.** Oscar Ybarra gave the budget report. There was some discussion of the effect on DPS of pending legislation not appropriating resources for certain programs and the retire/rehire process. Also discussed was the status of our exceptional item requests.
- 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 CHL issuance backlog, private security licensing and pending legislation, the current recruit school and building projects. Task forces, pending legislation pertaining to task forces and medical evaluations/examinations of recruit applicants were discussed. The Texas Highway Patrol Division report was given by Randy Elliston. There was some discussion on traffic stops, STEP activities and ongoing drug interdiction efforts. Commissioner McHugh asked some of the attendees to share their thoughts and memories of Assistant Driver License Chief Frank Elder who had passed away last week. Judy Brown gave the Driver License Division report, including an update on federal legislation affecting driver licenses, the problem of incorrect DL mailing and efforts to remedy it, Texas Online marketing efforts, the DL fraud unit and ongoing projects including CRIS and DL reengineering. The Criminal Law Enforcement Division report was given by Gary Stone. There was some discussion on collaboration of CLE and THP on follow-up investigations pertaining to drug seizure traffic stops and ongoing activities of the various services. Earl Pearson gave the Ranger Division report. The Information Management Service report was given by Bryan Lane.
- VII. Billboard advertising.** There was some discussion on proposals by two (2) different private entities to use DPS insignia or the likeness of a DPS officer on billboards to promote public safety. There was some discussion on these proposals. The proposals, advertising to cover costs of publications, and possible criteria guidelines will be discussed at a future meeting.
- VIII. For publication for public comment.**
- A. Proposed repeal of Rules 6.41-6.46, 37 TAC Secs. 6.41-6.46, relating to time, place and manner restrictions on Concealed Handgun License holders.** Burt Christian briefed the Commission on the proposed repeal. Upon motion by Commissioner Angelo and seconded by Commissioner Cascos, the attached repeal was unanimously approved for publication for public comment.
- IX. For adoption.**
- A. Proposed amendment to Rule 4.36, 37 TAC Sec. 4.36, relating to Commercial Motor Vehicle Compulsory Inspection Program, as published in 30 TexReg 1593, March 18, 2005.**
- B. Proposed amendment to Rule 21.1, 37 TAC Sec. 21.1, relating to Standards for Vehicle Equipment, as published in 30 TexReg 1593, March 18, 2005**
- C. Proposed amendments to Rule 23.73, 37 TAC Sec. 23.73, relating to Vehicle Inspection Fees, as published in 30 TexReg 1594, March 18, 2005**
- D. Proposed amendments to Rule 23.80, 37 TAC Sec. 23.80, relating to the procedures for the Vehicle Identification Number Verification performed during the first-time state inspection for out-of-state vehicles, as published in 30 TexReg 1595, March 18, 2005**
- E. Proposed amendments to Rule 23.93, 37 TAC Sec. 23.93, relating to Vehicle Emissions Inspection Requirements, as published in 30 TexReg 1597, March 18, 2005**
- F. Proposed amendment to Rule 27.1, 37 TAC Sec. 27.1, relating to the new location in Austin where a person may personally appear to request the**

**individual's criminal history record, as published in 30 TexReg 1600, March 18, 2005**

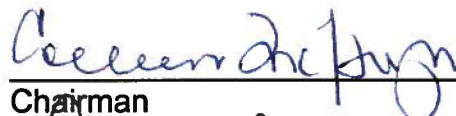
Mary Ann Courter briefed the Commission on the above proposed amendments. Upon motion by Commissioner Angelo and seconded by Commissioner Cascos, the attached amendments were unanimously approved for final adoption.

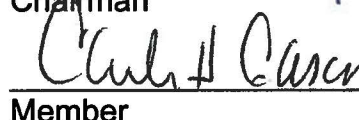
- X. Personnel matters, pending and contemplated litigation, ongoing criminal investigations, status of purchase of real property.** The Commission went into Executive Session pursuant to Tex. Gov. Code Secs. 551.071, 551.074, 551.072 & 411.0041 to discuss personnel matters, including the Director's action of discharging probationary employee William Zwerschke; 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 personnel matters, contemplated litigation and ongoing criminal investigations. Special Ranger commissions had been considered for DPS retirees Jerry Conway, Billy B. Ennis, Oliver King, Joe A. Mora, Jack York and James Vanison. Upon motion by Commissioner Cascos and seconded by Commissioner Angelo, Special Ranger commissions were approved for the above named individuals. Upon motion by Commissioner Angelo and seconded by Commissioner Cascos, consent to discharge probationary employee William Zwerschke was given (see attached Order).

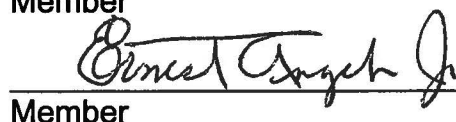
Joining the meeting were several persons associated with the DPSOA. Brian Hawthorne introduced those persons who had worked on behalf of DPS on proposed legislation. Commissioner McHugh expressed appreciation on behalf of the Commission for the collaboration of DPSOA and DPS for the successful results achieved at the legislature for salary increases for commissioned and non-commissioned employees. Colonel Davis introduced Michael Kelley and Janie Smith of our Legislative Liaison Office. Commissioner McHugh stated thanks were also to be given to the legislative members and top state officials for their support. Colonel Davis also expressed his appreciation for the hard work done.

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

Read and approved this 29th day of June, 2005.

  
Chairman

  
Member

  
Member

IN THE MATTER OF

THE APPEAL OF DISCHARGE OF

TERRY L. COOLEY

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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 Terry L. Cooley on the 19<sup>th</sup> day of May, 2005. Mr. Cooley received adequate notice of this hearing but did not appear for the hearing. Pursuant to the Policies and Procedures for the Appeal of an Employment Discharge to the Public Safety Commission, Terry L. Cooley is deemed to have withdrawn his appeal of the discharge and request for a hearing, and the Director's decision in this matter will be affirmed.

Therefore, the Commission finds that there is just cause to discharge Terry L. Cooley and affirms the Director's decision in this matter.

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

ENTERED AND SIGNED on the 19 day of May, 2005.

  
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Colleen McHugh, Chairman  
Public Safety Commission



TEXAS DEPARTMENT OF PUBLIC SAFETY  
ORDER ADOPTING A RULE

On May 19, 2005, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Commercial Vehicle Regulations and Enforcement Procedures  
Title 37 T.A.C. Part I, Chapter 4  
Subchapter C  
Section Number 4.36

The Texas Department of Public Safety adopts amendments to Section 4.36, concerning Commercial Motor Vehicle Compulsory Inspection Program, without changes to the proposed text as published in the March 18, 2005, issue of the Texas Register (30 TexReg 1593).

Amendments to the section are necessary in order to correct an inaccuracy listed in subsection (f)(2) .

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 548.002, which authorizes the department to adopt rules to administer and enforce the compulsory inspection of vehicles.

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 19, 2005, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Equipment and Vehicle Standards  
Title 37 T.A.C. Part I, Chapter 21  
Section Number 21.1

The Texas Department of Public Safety adopts an amendment to Section 21.1, concerning Standards for Vehicle Equipment, without changes to the proposed text as published in the March 18, 2005, issue of the Texas Register (30 TexReg 1593).

Section 21.1 provides specifications and performance standards for vehicle equipment to include lighting devices and after-market window sunscreening.

Amendment to the section is necessary in order to correct a textual error in (f)(6)(A) that affected the flexibility of the medical exemption for vehicle window tint. This resulted in a limit on the extent of the medical exception.

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, Section 547.101, which authorizes the Department of Public Safety to adopt standards for vehicle equipment.

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 19, 2005, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Vehicle Inspection  
Title 37 T.A.C. Part I, Chapter 23  
Subchapter F  
Section Number 23.73

The Texas Department of Public Safety adopts amendments to Section 23.73, concerning Vehicle Inspection Fees, without changes to the proposed text as published in the March 18, 2005, issue of the Texas Register (30 TexReg 1594).

Section 23.73 specifies the fees inspection stations may charge vehicle operators for and in conjunction with a vehicle inspection.

Amendments to the section are necessary in order for the department to adopt the emissions testing fee as adopted by the Texas Commission on Environmental Quality (TCEQ) for the Austin area Early Action Compact (EAC) I/M program for Travis and Williamson counties. Effective on September 1, 2005, in these counties, the fee for an emissions inspection is \$16.00. Additional amendments are adopted to clarify allowable practices relating to advertising and the combination of services offered in conjunction with inspection services. During previous rulemaking, as published in the March 25, 2002, issue of the Texas Register (27 TexReg 2241), the department removed restrictions on offering vehicle inspections in conjunction with other products and services and related advertisements. The purpose was intended to allow cost saving promotions encouraging inspections during the mid-month prior to the first-week bottleneck after inspection certificates expired. However, based on vehicle owner complaints and subsequent investigations of those complaints, the department has determined that some vehicle owners have unknowingly paid for additional and unsolicited services in conjunction with the required inspection. The adoption of amendments to the section will clarify that additional services must not be related to an item of inspection; must not be required as a prerequisite for obtaining an inspection; and any advertisement must clearly state such.

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, Sections 548.301(b-1), 548.501, and 548.505, which authorizes the commission to establish a motor vehicle emissions inspection and maintenance program for vehicles subject to an early action compact, allows the department to collect advance payments for certificates, and allows the department to establish a maximum emissions-related inspection fee, respectively.

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 19, 2005, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Vehicle Inspection  
Title 37 T.A.C. Part I, Chapter 23  
Subchapter F  
Section Number 23.80

The Texas Department of Public Safety adopts amendments to Section 23.80, concerning Out-of-State Vehicle Identification Number Verification, without changes to the proposed text as published in the March 18, 2005, issue of the Texas Register (30 TexReg 1595).

The main purpose of Section 23.80 is to provide procedures for the Vehicle Identification Number (VIN) verification performed during the first-time state inspection for out-of-state vehicles.

Texas Transportation Code, Section 548.256, as amended by Senate Bill 5, Acts 2001, 77th Legislature, Regular Session, Chapter 967, Section 9, added subsections (c) and (d) effective until August 31, 2008. The department previously adopted amendments to Section 23.80, as published in the October 26, 2001, issue of the Texas Register (26 TexReg 8547) to effect these legislative changes. The amendments required inspection stations to collect \$225.00, retaining \$5.00 to cover their administrative costs, for the VIN verification as required by the statute. In a final judgment order for case number 102585, dated June 6, 2002, the 200th District Court, Travis County, held that Section 9 of Texas Senate Bill 5, as it amended Texas Transportation Code, Section 548.25(c) and (d) was unconstitutional.

Amendments to Section 23.80 are necessary in order to formalize the department's procedures in response to the court order and clarify issues concerning the VIN verification procedure.


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; Texas Transportation Code, Section 548.002, which allows the Department of Public Safety to adopt rules to administer the compulsory inspection of vehicles; Texas Transportation Code, Section 548.256(a) and (b), which provides that the department prescribe and provide the form used for VIN verifications; and Texas Transportation Code, Section 548.501(a), that sets the fee for the verification form.

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 19, 2005, the Public Safety Commission (Commission) by majority vote approved rules concerning:

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

The Texas Department of Public Safety adopts amendments to Section 23.93, concerning Vehicle Emissions Inspections Requirements, without changes to the proposed text as published in the March 18, 2005, issue of the Texas Register (30 TexReg 1597).

Amendments to the section are necessary in order to expand the vehicle emissions inspection program to Travis and Williamson counties as one of the measures of the Austin area Early Action Compact (EAC) clean air action plan, approved by the Texas Commission on Environmental Quality (TCEQ), in accordance with Senate Bill 1159, 78th Legislature, 2003. Effective September 1, 2005, department certified inspection stations in the two counties must perform on-board diagnostic (OBD) inspections and two-speed idle (TSI) inspections on vehicles subject to emissions testing during the annual safety inspection. In facilitating program operation, inspection stations in the two counties will be required to obtain emissions testing equipment certified by TCEQ. The department will also implement and administer programs for recognized repair facilities and technicians specializing in emissions repair in the two counties. Additional amendments prepare for the conditional suspension of the vehicle emissions inspection program in El Paso County in the event it is designated as reaching attainment, minor textual corrections, and reflect changes in statutes concerning registration.

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 548.301(b-1), which authorizes the commission to adopt rules establishing a motor vehicle emissions inspection and maintenance program for vehicles subject to an early action compact.

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 19, 2005, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Crime Records  
Title 37 T.A.C. Part I, Chapter 27  
Subchapter A  
Section Number 27.1

The Texas Department of Public Safety adopts amendments to Section 27.1, concerning Right of Review, without changes to the proposed text as published in the March 18, 2005, issue of the Texas Register (30 TexReg1600).

Amendments to the section are necessary in order to set out the new location in Austin where an individual may personally appear to request the individual's criminal history record.

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; Texas Government Code, Section 411.086, which requires the Texas Department of Public Safety to adopt rules that provide for a uniform method of requesting criminal history record information from the department; and Texas Government Code, Section 411.083(b)(3), which requires the Texas Department of Public Safety to grant access to criminal history record information to the person who is the subject of the information.

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





