

MINUTES
PUBLIC SAFETY COMMISSION
January 23, 2002
Austin, Texas

The Public Safety Commission met in Austin, Texas on January 23, 2002. Attending the meeting were Chairman Colleen McHugh and Commissioners Robert Holt and James B. Francis, Jr.

DPS Staff members present:

Tommy Davis, Director
Frankie Waller, Assistant Director
David McEathron, Assistant Director
Tom Haas & Shaun Constancio, Accounting & Budget Control
Charles Graham, Randy Elliston, Bob Burroughs, Coy Clanton, Wendell Miller, L. A. Reinhart, Art Garza, J. R. Allen, Lamar Beckworth, Danny Smith, Morris Arnold, Traffic Law Enforcement
C. J. Havrda, Rangers
Mike Scott & Marshall Caskey, Criminal Law Enforcement
Burton Christian, Administration
David Gavin, Valerie Fulmer, Angie Klein, Crime Records
Greg Gloria & Frank Elder, Driver License
Farrell Walker & Larry Story, Audit & Inspection
Mary Ann Courter, General Counsel
Mary Lauderdale & Roger Killingsworth, Information Management Service
David Outon, Internal Affairs
Bill Isbell, Aircraft
Andy Mokry & Tavia Wendlandt, Building Program
Ron Urbanovsky, Crime Laboratory
Michael Kelley, Legislative Liaison
Tela Mange, Public Information
Dorothy Wright, Secretary

Guests present:

Will Harrell, ACLU
Angelica Marin, Senate Finance Committee
Jess Calvert, House Appropriations 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 December 12, 2001 meeting were approved.
- II. **Border Safety Inspection Stations Update.** Coy Clanton updated the Commission on border safety inspection stations.

- III. Public Comment.** Will Harrell, American Civil Liberties Union, expressed his interest in proposed Rules 5.31-5.38, Threat Against Peace Officer.
- IV. Budget Matters.** Mike Scott and Ron Urbanovsky briefed the Commission on a proposed gift from the Parker College of Chiropractic. Upon motion by Commissioner Holt and seconded by Commissioner Francis, a gift of \$22,184.96 was accepted from the Parker College of Chiropractic for use by the CODIS Lab. The Commission requested the money be used to purchase an item that would help improve the lab. Tom Haas gave the budget report. There was some discussion on the LAR process, proposed capital purchases for FY2002, Historically Underutilized Business (HUB) purchases and the Governor's request for all state agencies to look at possible cost saving measures.
- V. Audit and Inspection Report.** Farrell Walker gave the Audit and Inspection report. There was some discussion on contracts over \$5,000 for FY2001.
- VI. For adoption.**
- A. Proposed Rules 5.31-5.38, 37 TAC Secs. 5.31-5.38, relating to Threat Against Peace Officer, as published in 26 TexReg 8761, Nov. 2, 2001.** Marshall Caskey briefed the Commission on the proposed rules. Mr. Harrell, ACLU, commented on the proposed rules. After some discussion on the proposed rules, upon motion by Commissioner Francis and seconded by Commissioner Holt the attached rules were unanimously approved for adoption.
- VII. Division Reports and Other Unfinished Business.** The Administration Division report was given by Burt Christian. There was some discussion on EMS terrorism preparedness; ongoing recruit schools; building projects, including the new Houston Regional Office and the Florence firing range; and the fleet vehicle program. Angie Klein, Crime Records, gave a presentation on the Texas sex offender registration program and the internet. There was some discussion on the accuracy of the data on this website. Charles Graham gave the Traffic Law Enforcement Division report. Reports were also given from each Regional Commander on activities in their respective area. There was some discussion on the canine and bomb teams, and other special programs within TLE. The Commission recessed for lunch.

Upon reconvening, the Driver License Division report was given by Greg Gloria. There was some discussion on the e-commerce project and CDL verification. Mike Scott gave the Criminal Law

Enforcement Division report. There was some discussion on the recent State Auditor's Safeguarding Seized Assets audit, counter terrorism and intelligence gathering training, the CODIS backlog and narcotics task forces. The Ranger Division report, including an update on the Unsolved Crime Investigation Unit and the ongoing Ranger interview process, 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 TNRCC for implementation of the State's vehicle emissions inspection/ maintenance program.

VIII. For publication for public comment

- A. Proposed Rule 5.2, 37 TAC Sec. 5.2, relating to Memorandum of Understanding with the Governor's Criminal Justice Division with regard to narcotics task forces.** Mike Scott briefed the Commission on the proposed rule, noting a correction that needed to be made before publishing. Upon motion by Commissioner Francis and seconded by Commissioner Holt, the attached rule was unanimously approved for publication in the Texas Register for public comment.
- B. Proposed Amendments to Rule 15.24, 37 TAC Sec. 15.24, relating to identification of applicants for driver licenses and identification certificates.** Greg Gloria briefed the Commission on the proposed amendments. There was some discussion on the proposed amendments. Upon motion by Commissioner Francis and seconded by Commissioner Holt, the attached amendments were approved for publication in the Texas Register for public comment.
- C. Proposed Rule 23.96, 37 TAC Sec. 23.96, relating to the Emissions Analyzer Access/Identification card.** Bob Burroughs briefed the Commission on the proposed rule. Upon motion by Commissioner Holt and seconded by Commissioner Francis, the attached rule was unanimously approved for publication in the Texas Register for public comment.

IX. For adoption.

- A. Repeal of Existing Rule 1.125, 37 TAC Sec. 1.125; proposed new Rule 1.125, 37 TAC Sec. 1.125, relating to fees for copies of accident reports and accident information, as published in 26 TexReg 8760, Nov. 2, 2001**
- B. Proposed Amendments to Rule 15.59, 37 TAC Sec. 15.59, relating to alternate methods of conducting driver license renewal and duplicate transactions, as published in 26 TexReg 8764, Nov. 2, 2001**
- C. Proposed Rule 15.88, 37 TAC Sec. 15.88, relating to policies and procedures necessary for the surrender of**

suspended, cancelled, revoked, disqualified or denied driver licenses, as published in 26 TexReg 8765, Nov. 2, 2001

- D. Proposed Amendments to Rules 16.8 & 16.9, 37 TAC Secs. 16.8 & 16.90, relating to policies and procedures necessary for vision and limb waivers for commercial driver license applicants, as published in 26 TexReg 8766, Nov. 2, 2001
- E. Proposed Rule 16.14, 37 TAC Sec. 16.14, relating to policies and procedures necessary for a commercial driver license applicant to apply for a limb waiver, as published in 26 TexReg 8766, Nov. 2, 2001
- F. Proposed Amendments to Rule 16.34, 37 TAC Sec. 16.34, relating to commercial driver license skill test waiver procedure, as published in 26 TexReg 8768, Nov. 2, 2001
- G. Repeal of existing Rule 21.6, 37 TAC Sec. 21.6; Proposed new Rule 21.6, 37 TAC Sec. 21.6, relating to minimum standards for scales not furnished by DPS and used for law enforcement purposes, as published in 26 TexReg 8769, Nov. 2, 2001

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

- X. **Proposed Rule 28.101-28.110, 37 TAC Secs. 28.101-28.110, relating to DNA Database, published in the Jan. 4, 2002 issue of the Texas Register.** Mary Ann Courter advised the Commission that the above referenced rules had been published and the Director has the authority to approve them. No action is necessary by the Commission.

- XI. **Personnel Matters, Pending and Contemplated Litigation and Ongoing Criminal Investigations.** The Commission went into Executive Session pursuant to Tex. Gov. Code Secs. 551.071, 551.074 & 411.0041 to discuss personnel matters, pending and contemplated litigation and an ongoing criminal investigation. Upon reconvening Regular Session, Commissioner McHugh announced that the Commission had discussed personnel matters, pending and contemplated litigation and an ongoing criminal investigation. Special Ranger commissions had been considered for DPS retirees William E. Lucas, Joseph R. Robinson, Randall VanDeventer and James T. Yezak. A motion was made by Commissioner Francis and seconded by Commissioner Holt unanimously approving Special Ranger commissions for the above named individuals.

There being no further business, the meeting was adjourned.

Read and approved this _____ day of _____, 2002.

Chairman

Member

Member

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 23, 2002, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Criminal Law Enforcement
Title 37 T.A.C. Part I, Chapter 5
Subchapter C
Section Numbers 5.31 - 5.38

The Texas Department of Public Safety (DPS) adopts new Subchapter C, Sections 5.31-5.38, relating to Threats Against Peace Officer, without changes to the proposed text as published in the November 2, 2001, issue of the Texas Register (26 TexReg 8761) and will not republish them.

The new sections are necessary as a result of the passage of Tex. H.B. 776, Acts 2001, 77th Leg., R.S., ch. 474, §3. The new sections promulgate the policies and procedures requiring law enforcement agencies that have determined that some individual that has made a threat against a police officer to report that incident according to department rules.

No comments were received regarding adoption of the new sections.

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 Government Code, Section 411.048(c), (e), and (i) which provide that the director of the department shall adopt rules, subject to commission approval, to prescribe the form and manner to be used by a criminal justice agency reporting to the department its determination of a serious threat against a peace officer, to prescribe how an agency may use information disseminated to it by the department, and to require compliance with general federal intelligence guidelines.

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



For issue of: PI Working ACK

Adopted Rulemaking Action

Name of Agency: Texas Department of Public Safety

Agency Code: 201

Title: 37 Part: I.

Chapter: 5. Criminal Law Enforcement

Subchapter: C. Threats Against Peace Officer

Division:

TAC Section Number(s): Sections 5.31- 5.38

Proposed Action TRD Number: 200106224

Proposed Action Issue Date: November 2, 2001

New Amendment Repeal Adoption by Reference

With Changes Without Changes Federal Mandate

Effective Date: 20 Days after Filing Other (Specify): _____

File Name: 0110.201

Means of transmitting: Diskette Internet E-Mail

Graphics Included? Yes No

Graphics File Name:

Means of transmitting: Diskette Internet E-Mail

Verification/Certification

I verify that I have reviewed the submitted document and that it conforms to all applicable Texas Register filing requirements. The submitted document has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Agency Liaison: Mary Ann Courter or Patricia Holmes

Certifying Official: Thomas A. Davis, Jr.

Title: Director

Signature:

Date of Verification:

E-Mail Address: Patricia.Holmes@txdps.state.tx.us

Phone Number: (512) 424-2135

Fax Number: (512) 424-2251

The Texas Department of Public Safety (DPS) adopts new Subchapter C, Sections 5.31-5.38, relating to Threats Against Peace Officer, without changes to the proposed text as published in the November 2, 2001, issue of the *Texas Register* (26 TexReg 8761) and will not republish them.

The new sections are necessary as a result of the passage of Tex. H.B. 776, Acts 2001, 77th Leg., R.S., ch. 474, §3. The new sections promulgate the policies and procedures requiring law enforcement agencies that have determined that some individual that has made a threat against a police officer to report that incident according to department rules.

No comments were received regarding adoption of the new sections.

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 Government Code, Section 411.048(c), (e), and (i) which provide that the director of the department shall adopt rules, subject to commission approval, to prescribe the form and manner to be used by a criminal justice agency reporting to the department its determination of a serious threat against a peace officer, to prescribe how an agency may use information disseminated to it by the department, and to require compliance with general federal intelligence guidelines.

SUBCHAPTER C. THREATS AGAINST PEACE OFFICER.

Section 5.31. Subchapter Definitions. The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Agency — means a criminal justice agency, including the Department of Public Safety (DPS) when submitting a Threat Against Peace Officer (TAPO) report.

(2) 28 CFR — means 28 Code of Federal Regulations, Part 23.1 et seq., as promulgated by the U.S. Department of Justice, Office of Justice Programs.

(3) Consensual citizen encounter — means the approach of a citizen by an officer under limited circumstances that are neither mandatory nor coercive and that do not rise to the level of a detention or arrest, where:

(A) the citizen is objectively aware of the freedom to leave; and

(B) the officer engages in casual conversation not interrogation.

(4) Criminal justice agency — has the meaning assigned by the Code of Criminal Procedure, Article 60.01.

(5) Department or DPS — means the Texas Department of Public Safety.

(6) Director — means the director of the department.

(7) Officer — means a peace officer.

(8) Peace officer — has the meaning assigned by the Penal Code, Section 1.07(a).

(9) Serious threat against an officer — means an individual's expression of intent to inflict serious bodily injury or death on a peace officer.

(10) TAPO — means the Threat Against Peace Officer index managed by the department.

(11) TCIC — means the Texas Crime Information Center managed by the department.

(12) Texas User Specifications — means the latest draft of the DPS publication by that name and any cross-referenced material.

(13) TLETS — means the Texas Law Enforcement Telecommunication System managed by the department.

Section 5.32. Applicability and Purpose.

(a) Non-applicability. This subchapter does not apply to every threat or offense targeting an officer or threats made by a group rather than an individual.

(b) Applicability. This subchapter applies to a threat determined by a Texas criminal justice agency:

(1) to be a serious threat against an officer, directed specifically against an individual officer or generally against some or all officers; and

(2) not to be from an anonymous source.

(c) Background and purpose. After an individual makes a serious threat against an officer, an appropriately disseminated alert about that threat may provide critical tactical information to an officer in the field.

(1) The timely sharing of centrally-collected threat information will help protect officers.

(2) This central index system, called “TAPO,” is a pointer system designed to provide rapid, statewide access to information about these threats.

(3) This subchapter governs the submission, query, dissemination, use, and retention of an electronic record in the TAPO index and the information supporting that record.

Section 5.33. General requirements.

(a) DPS responsibility. The department assumes responsibility for 28 CFR compliance with respect to security and file maintenance of the TAPO index.

(b) Agency responsibility. Under Government Code, Section 411.048(i), an agency entering an electronic TAPO record must comply with the Texas User Specifications with respect to the information held by the agency to support the electronic record.

(1) Compliance with the Texas User Specifications and this subchapter is substantial compliance with 28 CFR.

(2) While DPS may assist the agency in its efforts to comply with 28 CFR, the agency assumes responsibility for 28 CFR compliance for the supporting information.

(c) Criminal predicate. No agency may submit an electronic TAPO record without a proper criminal predicate directly related to the threat information supporting the electronic record.

(1) A criminal predicate is shown for an electronic record when articulable information exists to establish sufficient facts to give a peace officer, investigator, or other trained criminal justice employee reasonable suspicion to believe that a particular individual has made a serious threat against an officer.

(2) The individual need not have been arrested for the threat being investigated or any other crime, as a predicate for submitting information to TAPO.

(d) Erroneous record. If information is disseminated from a TAPO record and later determined to be materially erroneous or incorrect, the submitting agency must notify each previous recipient of the error or correction in the record. The department may assist the agency in determining the identity of each recipient of the erroneous or incorrect record.

(e) Secondary database. No agency may use data received solely based on a TAPO query to populate another searchable database.

(f) Miscellaneous requirements. An agency shall comply with the following requirements of the Texas User Specifications:

(1) submission and collection;

(2) secure storage;

(3) inquiry and search capability;

(4) controlled dissemination; and

(5) purge and review process.

Section 5.34. Submission.

(a) Statutory report. Under Government Code, Section 411.048, a criminal justice agency must, upon determining that an individual has made a serious threat against an officer, immediately enter an electronic report of the determination into the DPS threat index in the form and manner provided by DPS rules.

(1) This section comprises the DPS rules concerning the form and manner for these reports.

(2) The form and manner may contain discretionary or mandatory provisions as described in the Texas User Specifications. Mandatory provisions describe the minimum information available to any agency making a proper TAPO query. Discretionary provisions describe additional intelligence information that may be stored by the department and available through a direct contact with DPS Special Crimes personnel.

(b) Form. An agency must, without regard to ultimate charge or case clearance, enter an electronic record into TAPO following the form required by the Texas User Specifications.

(c) Manner. An agency must enter the electronic record following the manner required by the Texas User Specifications.

(d) Removal. The department will remove an electronic TAPO record if:

(1) DPS receives an appropriate court order;

(2) DPS determines that the TAPO record is misleading, inaccurate, or otherwise no longer relevant; or

(3) the submitting agency fails or refuses to:

(A) provide adequate documentation of any material information supporting the record; or

(B) validate the supporting information within the five year review period described in the Texas User Specifications.

(e) Group membership. The department will not accept submission of an electronic TAPO record for an individual if the record is based solely on the individual's membership in a group.

(f) Target notification. An agency should take reasonable steps to notify the intended target of the threat.

Section 5.35. Query.

(a) Generally. An agency may query TAPO following the query requirements in the Texas User Specifications.

(b) Query responses. An agency with proper query access to TCIC through TLETS will receive a TAPO alert response to any one of several queries listed in the Texas User Specifications.

Section 5.36. Dissemination.

(a) By DPS. The department will disseminate a TAPO alert in compliance with this subchapter.

(b) By agency. The agency will immediately use a code to make the initial alert dissemination to an officer in the field by radio or other telecommunication system, unless there is a compelling reason to use plain English.

(1) The agency may provide other details of the alert, including the identity of the agency that submitted the electronic record to contact for specific, detailed information about the nature of the threat.

(2) The department encourages but does not require a uniform, statewide code to make the initial alert.

(c) Other dissemination by DPS. The department may disseminate selected information or analysis under this subchapter through a general statistical report, newsletter, bulletin, alert, or other appropriate media.

Section 5.37. Use.

(a) Generally limited. Generally, while TAPO is not designed to provide information to justify most official action, the same facts supporting the TAPO alert may be used as appropriate to support an action. TAPO merely alerts the officer and identifies the agency to contact in order to verify those facts. The officer may use the alert as expressly permitted by this section and, after contacting the agency, take other appropriate action based on direct information about any supporting fact.

(b) Use expressly prohibited. A TAPO alert indicates a potentially dangerous individual, not necessarily a wanted person. No officer or agency may use the TAPO by itself to provide:

(1) probable cause for a warrantless arrest;

(2) probable cause in an affidavit for an arrest or search warrant;

(3) a ground of denial for a permit or other license; or

(4) reasonable suspicion to stop or detain an individual.

(c) Use expressly permitted. An officer or agency may only use a TAPO alert to:

(1) take reasonable action to protect the officer or another;

(2) engage in a consensual citizen encounter; or

(3) establish reasonable suspicion to frisk a suspect stopped or detained for another independent reason.

Section 5.38. Retention and Review.

(a) Retention. An agency must retain the information supporting each electronic report submitted by the agency following the retention requirements in the Texas User Specifications.

(b) Review by agency. An agency must systematically review the information supporting each electronic report submitted by the agency to TAPO following the review requirements in the Texas User Specifications.

(c) Right of access by the subject. A individual, who is the subject of the information in a TAPO record, may request a copy of the TAPO record from DPS in compliance with the Public Information Act. The department shall promptly respond to the request.

(d) Review by the subject. A individual who is the subject of the information in a TAPO record, may request the director to review the information to determine whether the information complies with the rules adopted by the director. The department shall conduct the review using the same procedure under the Code of Criminal Procedure, Chapter 61, for reviewing criminal information collected on a criminal street gang.

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.

Issued in Austin, Texas on

Thomas A. Davis, Jr.
Director
Texas Department of Public Safety



For issue of: PI Working ACK

Proposed Rulemaking Action

Name of Agency: Texas Department of Public Safety

Agency Code: 201

Title: 37 Part: I

Chapter: 5. Criminal Law Enforcement

Subchapter: A. Investigation

Division:

TAC Section Number(s): Section 5.2

New Amendment Repeal Adoption by Reference

Proposed Date of Adoption 30 Days after Publication Other (Specify):

File Name: 0108.201

Means of transmitting: Diskette Internet E-Mail

Graphics Included? Yes No

Graphics File Name: 37_0005_0002-1.doc

Means of transmitting: Diskette Internet E-Mail

Verification/Certification

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Agency Liaison: Mary Ann Courter or Patricia Holmes

Certifying Official: Thomas A. Davis, Jr.

Title: Director

Signature:

Date of Verification:

E-Mail Address: Patricia.Holmes@txdps.state.tx.us

Phone Number: (512) 424-2135 (Pat) Fax Number: (512) 424-2251

The Texas Department of Public Safety (DPS) proposes new Section 5.2, concerning the Memorandum of Understanding with Criminal Justice Division of the Office of the Governor. The purpose of the proposed rule is the adoption of a Joint Memorandum of Understanding and all necessary revisions, between the DPS and the Office of the Governor, Criminal Justice Division (CJD), establishing the coordination of drug law enforcement efforts.

The Memorandum outlines the responsibilities of the department and CJD with regard to the State Drug Law Enforcement Strategy and Byrne-funded narcotics task forces.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Haas also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be statewide coordination/uniformity of drug programs. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Bobby Duvall, Deputy Commander, Texas Department of Public Safety, Criminal Law Enforcement Division, P.O. Box 4087, Austin, Texas 78773-0001. (512) 424-2150; or by fax at (512) 424-7166. All comments must be received by 5:00 p.m. on the 21st day after publication of the proposed new section in the *Texas Register* and should make reference to "Proposed Rule for Memorandum of Understanding with Criminal Justice Division of the Office of the Governor" in the subject line or in the beginning of the text.

The new section is proposed pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Government Code, Section 411.0096.

Texas Government Code, Section 411.004(3) and Section 411.0096 are affected by this proposal.

Section 5.2. Memorandum of Understanding with Criminal Justice Division of the Office of the Governor.

The Texas Department of Public Safety (DPS) and the Office of the Governor, Criminal Justice Division (CJD), has entered into a memorandum of understanding (MOU) pertaining to the coordination of drug law enforcement efforts. This MOU may be amended, as necessary, by subsequent written agreement adopted by rule. The current MOU is listed in the following:

Figure: 37 TAC Section 5.2.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on .

Thomas A. Davis, Jr.
Director
Texas Department of Public Safety

**MEMORANDUM OF UNDERSTANDING
COORDINATION OF DRUG LAW ENFORCEMENT EFFORTS**

This Memorandum of Understanding is entered into by the Texas Department of Public Safety (DPS) and the Office of the Governor, Criminal Justice Division (CJD).

PURPOSE

Pursuant to Section 411.0096, Texas Government Code, the Texas Department of Public Safety and the Office of the Governor, Criminal Justice Division hereby adopt a joint memorandum of understanding on coordinating the drug law enforcement efforts of DPS and CJD.

DRUG POLICY

DPS will provide CJD with a copy of the State Drug Law Enforcement Strategy, which sets forth DPS planning efforts to address the drug threat in Teams. Additionally, CJD will be provided a copy of the annual Drug Threat Assessment, which will be produced jointly by DPS and the Texas National Guard Counterdrug Program.

To provide representation by DPS on any advisory board advising the governor about drug policy, a representative of DPS will serve as a member of the Drug Demand Reduction Advisory Committee.

DRUG TASK FORCES

The Office of the Governor, Criminal Justice Division, has requested that DPS provide operational oversight to all Byrne-funded narcotics task forces through Task Force Operational Procedures (TFOP).

It shall be the role of CJD to administer and monitor all grants to drug task forces to ensure CJD, state and federal fiscal and programmatic compliance. CJD will maintain all authority for approving drug task force grant applications and determination of funding.

It shall be the role of DPS to exercise operational oversight of all drug task forces through DPS chain of command and to ensure compliance with uniform operational policies and procedures. DPS, with the concurrence of CJD, will develop uniform policies and procedures for all drug task forces funded by the state.

CJD and DPS shall exchange information in a timely manner to enable CJD and DPS to comply with state and federal reporting requirements.

AMENDMENT

This memorandum of understanding may be amended, as necessary, by subsequent written agreement adopted by rule.

APPROVED BY:

Texas Department of Public Safety

By:

Title: Director

Name: Tommy A. Davis Jr.

Office of the Governor,
Criminal Justice Division

By:

Name: Jay Kimbrough

Title: Director



For issue of: PI Working ACK

Proposed Rulemaking Action

Name of Agency: Texas Department of Public Safety

Agency Code: 201

Title: 37 Part: I

Chapter: 15. Drivers License Rules

Subchapter: B. Application Requirements- Original, Renewal, Duplicate, Identification Certificates

Division:

TAC Section Number(s): Section 15.24

New Amendment Repeal Adoption by Reference

Proposed Date of Adoption: 30 Days after Publication Other (Specify): _____

File Name: 0111.201

Means of transmitting: Diskette Internet E-Mail

Graphics Included? Yes No

Graphics File Name:

Means of transmitting: Diskette Internet E-Mail

Verification/Certification

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Agency Liaison: Mary Ann Courter or Patricia Holmes

Certifying Official:

Title: Director

Signature:

Date of Verification:

E-Mail Address: Patricia.Holmes@tdps.state.tx.us

Phone Number: (512) 424-2135

Fax Number:

(512)424-2251

The Texas Department of Public Safety proposes amendments to Section 15.24, relating to Identification of Applicants. This rule has been amended twice in the last three years. In April of 1999 the department amended the rule in response to recommendations by the American Association of Motor Vehicle Administrators (AAMVA) to standardize identification requirements throughout member jurisdictions. This rule was again amended in August of 2000 to address issues that arose during the implementation process. Current national events have caused the department to again review our rules and policies on the types of documents acceptable for the identification of an applicant for a Texas driver license or identification certificate. The driver license has evolved into the primary form of identification. For a majority of Texas residents this document is their only form of photo identification. As such, the department must take all reasonable steps to insure the accuracy of the information contained in the document.

The amendments to this section are as follows:

Changes in terminology include renaming Standalone Identification to Primary Identification and Documented Identification to Secondary Identification.

All documents acceptable for identification must be verifiable to their source. The current rule applied this requirement to items listed in the secondary identification section. The department maintains that the all items used for identification must be verifiable to assure the accurate identity of the applicant.

The documents listed under primary identification must contain the applicant's full name and date of birth. Under the current rule the department experienced instances where a primary document did not provide an applicant's full name and date of birth and as such did not provide sufficient information for accurately identifying the applicant.

The Department limits the use of a Texas driver license or identification certificate to two years following the expiration date. This insures that the individual's records are retrievable and as such makes these items a verifiable document. The Department will no longer accept expired United States passports or expired United States Immigration and Naturalization Service documents. This will insure a current photograph of the applicant for positive identification purposes.

The Department is deleting the exceptions to the Immigration and Naturalization Service documents. The Department has been advised by the Immigration and Naturalization Service that the I-94 should not be relied upon for an identity document. They are often filled out incorrectly, incompletely and are easily altered. In corresponding to the department's determination to accept only unexpired documents, the department will no longer accept passports issued by a foreign country with an I-20 student certification that has expired.

Out of state driver licenses and identification certificates were moved from primary identification to secondary identification. Due to the variances in the types of identification documents accepted by other licensing jurisdictions, the department has determined that additional documentation is necessary to verify the identity of the applicant.

Due to the department's position that identification documents must be verifiable, several documents listed in the supporting identification section were deleted.

The department proposes that the applicant may provide two secondary documents to establish identity. This supplements the two current methods for establishing an applicant's identity.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Haas also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to assist in the positive identification of an applicant for a Texas driver license or identification certificate. There is no anticipated economic cost to small businesses, large businesses or micro-businesses. The cost to individuals who are required to comply with the section as proposed will be the cost of obtaining a Texas driver license, commercial driver license, or an identification certificate.

Comments on the proposal may be submitted to Frank Elder, Assistant Chief, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0300, (512) 424-2768.

The amendment is proposed pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission to adopt rules, considered necessary for carrying out the department's work, and Texas Transportation Code, Section 521.005.

Texas Government Code, Section 411.004(3) and Texas Transportation Code, Section 521.005 are affected by this proposal.

Section 15.24 Identification of Applicants.

All original applicants for a driver~~[driver's]~~ license or identification certificate~~[certificates]~~ must present proof of identity satisfactory to the department. **All documents must be verifiable.** There are three categories of documents that may be presented to establish ~~[that acceptable]~~ proof of identity.

(1) **Primary**~~[Standalone]~~ identification. These items are complete within themselves and require no supporting instruments: **These documents must contain the applicant's complete name and full date of birth:**

(A) ~~[valid or expired-]~~Texas driver~~[driver's]~~ license (DL) or identification certificate (ID) with photo **within two years of expiration date;**

(B) **unexpired** United States passport;

(C) United States citizenship (naturalization) certificate with identifiable photo;

(D) **unexpired** United States Immigration and Naturalization Service document with verified data and identifiable photo; **or**, ~~[- Exceptions to this are:]~~

~~[(i) Record of Arrival and Departure stamped "Refugee" (I-94) no photo required, or]~~

~~[(ii) Passports issued by a foreign country with an I-20 student certification with a valid or expired visa;]~~

~~(E) [valid photo DL or photo ID issued by another (United States) state, Puerto Rico, the District of Columbia, or Canadian province; or,]~~

~~[(F)]~~ **unexpired** United States military ID card **for active duty, reserve or retired personnel** with identifiable photo.

(2) **Secondary**~~[Documented]~~ identification. These items are recorded governmental documents (United States, 1 of the 50 states, a United States territory, District of Columbia or Canadian province)~~[- whose authenticity can be verified (traceable to an original source for confirmation or refutation)]~~:

(A) original or certified copy of a birth certificate issued by the appropriate State or Canadian province Bureau of Vital Statistics or equivalent agency;

(B) original or certified copy of United States Department of State Certification of Birth (issued to United States citizens born abroad); or

(C) **unexpired photo DL or photo ID issued by another (United States) state, US territory, the District of Columbia, or Canadian province;**

(D) original or certified copy of court order with name and date of birth (DOB); **or** ~~[-]~~

(E)~~[(D)]~~ For applicants born before 1961, the following items would be acceptable in this category:

(i) original or certified copy of Form DD-214;

(ii) original or certified copy of other state or federal governmental record that states name and DOB (such as United States census records or Social Security records).

(3) Supporting identification. These items consist of other records or documents that aid examining personnel in establishing the identity of the applicant. The following items are **not all inclusive. The examining or supervisory personnel may determine that an**

unlisted document meets the department's needs in establishing identity. [listed as examples only and should not be construed as an absolute list of "must have" items:]

(A) [~~public~~] school records;

(B) [~~infant baptismal records~~];

[~~(C)~~] insurance policy (at least two years old);

(C)[~~(D)~~] vehicle title;

[~~(E) home mortgage records~~];

[~~(F) marriage license~~];

[~~(G) two years of utility bills~~];

[~~(H) children's birth certificates~~];

[~~(I) library card~~];

(D)[~~(J)~~] military records;

(E) unexpired military dependant identification card;

[~~(K) award or certificate from educational institution~~];

(F)[~~(L)~~] original or certified copy of marriage license or divorce decree;

(G)[~~(M)~~] voter registration card;

(H)[~~(N)~~] Social Security card;

(I)[~~(O)~~] pilot's license;

(J)[~~(P)~~] concealed handgun license;

(K)[~~(Q)~~] Texas driver's license temporary receipt;

(L) expired DL or ID issued by another state, territory, District of Columbia or Canadian province that is within two years of the expiration date.

(M)[~~(R)~~] a foreign passport (with or without a United States Visa); or

(N)[~~(S)~~] a consular document issued by a state or national government.

(4) Every original applicant must present:

(A) one piece of **primary**~~[standalone]~~ identification, or

(B) one piece of **secondary**~~[documented]~~ identification plus **two**~~[one or more]~~ pieces of support identification; **or**~~[-]~~

(C) two pieces of secondary identification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on .

Thomas A. Davis, Jr.
Director
Texas Department of Public Safety



For issue of: PI Working ACK

Proposed Rulemaking Action

Name of Agency: Texas Department of Public Safety

Agency Code: 201

Title: 37 Part: I

Chapter: 23. Vehicle Inspection

Subchapter: G. Vehicle Emissions Inspection and Maintenance Program

Division:

TAC Section Number(s): Section 23.96

New Amendment Repeal Adoption by Reference

Proposed Date of Adoption 30 Days after Publication Other (Specify):

File Name: 0109.201

Means of transmitting: Diskette Internet E-Mail

Graphics Included? Yes No

Graphics File Name:

Means of transmitting: Diskette Internet E-Mail

Verification/Certification

I verify that I have reviewed the submitted document and that it conforms to all applicable Texas Register filing requirements. The submitted document has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Agency Liaison: Mary Ann Courter or Patricia Holmes

Certifying Official: Thomas A. Davis, Jr.

Title: Director

Signature:

Date of Verification:

E-Mail Address: Patricia.Holmes@txdps.state.tx.us

Phone Number: (512) 424-2135 (Pat) Fax Number: (512) 424-2251

The Texas Department of Public Safety proposes new Section 23.96, concerning the Emissions Analyzer Access/Identification card. The section establishes the department's procedures for issuance and use of this card including the department's security policy relating to the card. The emissions analyzer access/identification card (access/ID card) is required by changes in the software specifications of vehicle emissions analyzers used after May 1, 2002 in all counties performing vehicle emissions testing as a part of the annual vehicle safety inspection, except El Paso County. The new specification requires that access to the vehicle emissions analyzers at certified inspection stations be controlled using an access/ID card. The access/ID card features a bar-coded access code combined with a unique personal identification number (PIN) for each individual vehicle inspector. The access/ID card will also display a photograph of the inspector.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Haas also has determined that for each year of the first five-year period the rule is in effect the anticipated public benefit resulting from adoption of the section is twofold. First, the public will be assured through the use of the photograph access/ID card that the person performing the annual safety inspection is the inspector whom the department certified. Second, use of the access/ID card and unique PIN will enhance the validity of vehicle emissions testing records. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses. There is no anticipated cost to individuals.

Comments on the proposal may be submitted to E. Eugene Summerford, Legal Counsel, Vehicle Inspections and Emissions, Texas Department of Public Safety, Box 4087, Austin, TX 78773-0543; or by fax at (512) 424-2774. All comments must be received by 5:00 p.m. on the 21st day after publication in the *Texas Register* and should refer to "Proposed Rule 37 TAC Section 23.96" in the subject line or at the beginning of the text.

The new section is proposed pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, Section 548.302, which authorizes the commission to develop and impose requirements to ensure inspection certificates are not issued to a vehicle subject to the motor vehicle emissions inspection and maintenance program unless the vehicle has passed a motor vehicle emissions inspection; Section 548.303, which authorizes the commission to administer the Motor Vehicle Emissions Inspection and Maintenance Program; Section 548.002, which authorizes the Department of Public Safety to adopt rules and enforce the compulsory inspection of vehicles; and Section 548.401, which allows the issuance of inspection certificates only if certified under rules adopted by the department.

Texas Government Code, Section 411.004(3) and Texas Transportation Code, Sections 548.002, 548.302, 548.303, and 548.401 are affected by this proposal.

Section 23.96. Emissions Analyzer Access/Identification Card.

(a) General. After May 1, 2002, access to the vehicle emissions analyzers at certified inspection stations in all counties, except El Paso County, shall be controlled using an access/identification card.

(b) Access/Identification Card (Access/ID card).

(1) The department will issue an Access/ID card to each certified inspector who performs emissions testing. The Access/ID card will be in a format prescribed by the department that identifies the individual as a department-certified inspector. At a minimum, it will contain the following additional information:

(A) photograph of the inspector;

(B) inspector's name, first and last;

(C) inspector identification number; and

(D) bar coded information used to authenticate inspection records with the Texas Information Management System (TIMS).

(2) At the time of issue, the Access/ID card is enrolled into the Texas Information Management System (TIMS) by a department technician. The Access/ID card will not be activated until this enrollment in the TIMS is complete.

(3) The Access/ID card is the inspector's official identification. Inspectors must carry the Access/ID card on their person at all times while performing inspection duties; and it must be presented to any department official upon request.

(4) Access/identification cards are nontransferable, nor may they be duplicated. The inspector is responsible for all transactions made between the vehicle analyzer and the Texas Information Management System made using their Access/ID card.

(5) The inspector is responsible for upkeep of the card. Loss of an Access/ID card shall immediately be reported to the proper department representative. The replacement fee for a lost, defaced, stolen, or discarded Access/ID card is \$10.00.

(6) All Access/ID cards are the property of the department and must be returned upon request.

(7) Any lost or stolen Access/ID card recovered, which cannot be immediately returned to the proper cardholder, will be returned to the department. Returned Access/ID cards may be claimed by the inspector after showing proof of identity.

(8) The data records maintained in the Texas Information Management System are government records. Fraudulent use of the Access/ID card or the entering of false information using the Access/ID card will subject the user to criminal action under either

Penal Code Section 37.10, Transportation Code Section 548.601, or both as well as administrative action by the department.

(c) Use of Access/Identification Card (Access/ID card).

(1) Before an official emissions inspection may begin, the inspector must enter two codes that uniquely identify the vehicle inspection record with the inspector.

(2) The vehicle emissions analyzer first requires the entry of the inspector's access. The entry of the access code is via the 2-D bar code reader, which reads the access code from an access/identification card. The inspector is required to enter his access code using the analyzer bar code reader for every inspection. The vehicle analyzer automatically verifies the inspector's access code, certification expiration date, and the presence of an inspector or station lockout.

(3) After the inspector's access code is validated, the inspector will then be required to enter a unique personal identification number (PIN) known only to the inspector. This PIN is encrypted on the analyzer and is unreadable to anyone and is neither displayed nor printed in any way. Inspectors may not give, share, lend, or divulge this PIN to another person without the explicit consent of appropriate department personnel. Failure to comply with this paragraph shall result in suspension or revocation of the inspector's certification as well as any appropriate criminal action or administrative disciplinary action. Inspectors are responsible for unauthorized access of the Texas Information Management System resulting from their negligence or carelessness in maintaining the confidentiality of their Personal Identification Number (PIN).

(d) Inspector's signed statement acknowledging the department's policy for the use and protection of emissions analyzer access/identification card. Each inspector shall, as a condition of issue of the Access/ID card, complete and sign, on a locally produced form, the following statement:

"DPS Policy for the Use and Protection of Emissions Analyzer Access/Identification Card.

I acknowledge that I have read the Department of Public Safety Rule for the use and protection of the Emissions Analyzer Access/Identification Card and corresponding Personal Identification Number (PIN). I understand that I must comply with the rule when accessing and using the vehicle emissions analyzer and my failure to comply with the rule may result in suspension or revocation of the inspector's certification as well as any appropriate criminal action or administrative disciplinary action.

Signature: _____

Printed Name: _____

Inspector ID #: _____

Date: _____.”

Issued in Austin, Texas on _____ .

Thomas A. Davis, Jr.
Director
Texas Department of Public Safety

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 23, 2002, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Organization and Administration
Title 37 T.A.C. Part I, Chapter 1
Supchapter I
Section Number 1.125

The Texas Department of Public Safety adopts the repeal of Section 1.125, concerning Statistical Services Bureau Fees, without changes to the proposed text as published in the November 2, 2001, issue of the Texas Register (26 TexReg 8760) and will not republish it.

The repeal of this section is necessary since it is outdated and does not follow the General Services Commission's policy for the release of accident information in bulk. This action is being filed simultaneously with the adoption of new Section 1.125 that will make the fee for the sale of accident reports consistent with statute.

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.

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



For issue of: PI Working ACK

Adopted Rulemaking Action

Name of Agency: Texas Department of Public Safety

Agency Code: 201

Title: 37 Part: I.

Chapter: 1. Organization and Administration

Subchapter: I. Fees For Copies Of Records

Division:

TAC Section Number(s): Section 1.125

Proposed Action TRD Number: 200106226 Proposed Action Issue Date: November 2, 2001

New Amendment Repeal Adoption by Reference

With Changes Without Changes Federal Mandate

File Name: 1212c.201

Means of transmitting: Diskette Internet E-Mail

Graphics Included? Yes No

Graphics File Name:

Means of transmitting: Diskette Internet E-Mail

Verification/Certification

I verify that I have reviewed the submitted document and that it conforms to all applicable Texas Register filing requirements. The submitted document has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Agency Liaison: Mary Ann Courter or Patricia Holmes

Certifying Official: Thomas A. Davis, Jr.

Title: Director

Signature:

Date of Verification:

E-Mail Address: Patricia.Holmes@txdps.state.tx.us

Phone Number: (512) 424-2135

Fax Number: (512) 424-2251

The Texas Department of Public Safety adopts the repeal of Section 1.125, concerning Statistical Services Bureau Fees, without changes to the proposed text as published in the November 2, 2001, issue of the *Texas Register* (26 TexReg 8760) and will not republish it.

The section is repealed due to being outdated and not following the General Services Commission's policy for the release of accident information in bulk. This adoption is filed simultaneously with the adoption of a new Section 1.125 that will make the fee for the sale of accident reports consistent with statute.

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.

~~[Section 1.125. Statistical Services Bureau Fees.]~~

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.

Issued in Austin, Texas on .

Thomas A. Davis, Jr.
Director
Texas Department of Public Safety

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 23, 2002, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Organization and Administration
Title 37 T.A.C. Part I, Chapter 1
Subchapter I
Section Number 1.125

The Texas Department of Public Safety adopts new Section 1.125, concerning Accident Records Bureau Fees, without changes to the proposed text as published in the November 2, 2001, issue of the Texas Register (26 TexReg 8760) and will not republish it.

New Section 1.125 is necessary to place into rule the department's current business policies regarding the sale of accident reports and accident information. The section further makes the sale of accident reports consistent with the statutory fee of \$6.00 as a result of the passage of Tex. H.B. 1544, Acts 2001, 77th Leg., R.S., ch. 1032, § 5.

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.

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