

MINUTES
PUBLIC SAFETY COMMISSION
January 29, 2010 meeting
Garland, Texas, held at Garland City Hall

Call to order

The Public Safety Commission met in Garland Texas at the Garland City Hall, on January 29, 2010. Attending the meeting were Chairman Allan Polunsky, Commissioners Carin Barth, Tom Clowe, and John Steen. Commissioner Ada Brown was absent. A quorum was present for the meeting. DPS staff members and guests were also present. The meeting was called to order by Chairman Polunsky at 10:43 a.m. Proper notice had been posted.

Chairman Polunsky thanked the City of Garland and Garland City Council for allowing use of their fine facility. Commissioner Steen asked to recognize Council member John Willis and the Members and thanked him for the use of the Council auditorium.

Commissioner Clowe informed the audience the reason the Commissioners were having their meeting in Garland was the fact that the DPS Garland office had the formal opening of the new Crime Lab earlier in the morning. He stated how happy the Commission members were to be there and thanked the Garland office for their work. Chairman Polunsky agreed the Grand Opening was "second to none".

Approval of Minutes (04:01 indicates time stamp from audio)

A motion was made by Commissioner Steen and seconded by Commissioner Barth approving the minutes for the December 11, 2009 meeting. Motion carried unanimously.

Public comment (4:35)

None

Chairman Polunsky took the opportunity to thank the nine troopers for their heroic actions in apprehending a gunman involved in the recent State Capitol incident. The nine Troopers were: Mike Black, Roy Bristow, GPD Sgt. Richard Cook, Burtha Farias, Juan Munoz, Juan Riojas, Husain Roussel, Lt. George Scheer, and Clayton Sullivan.

Director's Report (8:15)

Director McCraw introduced Representative Joe Driver and asked he be given an opportunity to speak. Representative Driver welcomed and thanked the Commissioners and all at DPS for coming to his district. He commended the DPS on the new crime lab, and thanked the DPS, noting the Capitol incident and the job well done.

Chairman Polunsky thanked Representative Driver for his support of the DPS and the Garland Crime Lab.

(11:10) Director Steven McCraw recognized Agent Armando Lopez, Jr. and Agent Bob Casey, FBI Special Agent, and all the FBI task force, who assisted in a recent incident serving a felony warrant on an individual with multiple bank robberies. A Purple Heart was presented to Agent Armando Lopez, Jr. who suffered life threatening injuries. Director McCraw also presented his

badge he had been requesting. Agent Lopez, Jr. thanked his teammates stating he would not be there today without them. Chairman Polunsky stated Agent Lopez and his wife were what the DPS was all about and thanked them.

(16:35) Director McCraw commented on the Capitol incident stating the individual was arrested after going into one of the Senator's offices, exiting the Capitol and firing 6 rounds in the air. DPS subdued the individual while he was reloading. Director McCraw further reported measures that were being investigated and grant money that could be requested and provided that would help in getting the department the equipment needed for future safety measures.

(20:03) Commander Jack Webster, on behalf of Region I, thanked the Commissioners for coming to the opening and conducting the Public Safety Commission meeting in Garland, TX. He recapped the CID division reorganization implemented on January 1, 2010. He reported on recent large seizures in his region. Commissioner Steen inquired about Commander Webster's career with DPS. He recapped his 24 year term. Commissioner Steen asked if he was pleased with the newly implemented regional boundaries whereby Commander Webster replied it was working better and he was pleased with the new structure.

New Business (24:45)

Commissioner Barth informed the Commission on the exigent circumstance approved contracts she had approved. She stated since there seemed to be a pattern of needing approval on short notice, she had requested a list of all contracts with renewal dates and details be put together to prevent emergency attention. DAD Sandra Fulenwider stated there currently was no automated system but should be in the coming months. Commissioner Steen inquired about the \$3M ALIS contract on the list and asked who determines if exigent. Director McCraw stated he signed off after the contract had been reviewed by a board. He further stated he decided when to bring exigent contracts to the Commissioners attention for review and approval; not only on these contracts but also grants.

(29:35) A lengthy report ensued by Director McCraw, DAD's White and Woodall on the 2010 Recruit School. The Director stated a review had been conducted resulting in a more appropriate 18 week school, which would help greatly in recruitment and costs. It was also recommended to conduct an 8 week recruit school for officers already TCLEOSE certified. This would begin with the June Academy offering an 18 week and an 8 week school for certified officers. It was decided new recruits did not have to be TCLEOSE certified before starting supervised field training. The Colonel stated there must be a minimum of 37 recruits to conduct a class to break even, and candidates must report in 100% physical readiness. This raised an issue, whereby Chairman Polunsky stated at a previous meeting it was agreed for no variances to the physical standards in order to be accepted in the recruit school. Colonel stated they never parted from this, but sometimes because of body fat an individual would not be allowed in the school. He said in the current 26 week school, this policy was not in place, but would be going forward. Chairman stated the Commission members made the policy and he was perplexed it had not been communicated to the head of the recruit school. DAD Woodall stated some candidates passed, but when they reported they did not meet the PRT and should be sent home and look for someone to fill their spot. Chairman reiterated all must pass PRT on day one when they report. Chairman asked that the minutes of the previous meeting be provided to the Director in order for him to be clear on the position of the PSC members on this topic. **A motion was made by Commissioner Steen modifying the 26 week training school to an 18 week school, and to conduct a modified 8 week school for officers already TCLEOSE certified by which the candidates would still be required six months under Field Training**

Supervision. However, there was no second to the motion. Commission Clowe had questions on the fully qualified physical readiness with respect to the school underway stating the current leadership was not with DPS at the time the previous Commission meeting took place, but that the Commission members wanted the recruits to be 100% physically ready. He asked about the current qualifications inquiring if students in the school were qualified, since the deviation was not what the Commission thought was happening. He commented the PRT had been modified but the misunderstanding was about meeting the PRT on day one when school started. He wanted clarification on the shortened school and modified school and confirmation that the candidates would be 100% physically ready. Commissioner Barth addressed the fact that the additional school was not in the approved budget. She asked if this was the best use of the variance monies for the Commission members to move up on that list. She added concern about the recent request for budget cuts and proposing the additional school. Commissioner Clowe voiced concern about the reaction of rolling recruits out too fast. DD Beckworth spoke on the concerns stressing while some of the time in the curriculum was being removed, the training standards in the quality of education and courses would not be compromised. Commissioner Clowe inquired about the guaranteed location assignment. Colonel clarified the location choices, explaining troopers were given a dream sheet whereby upon entering school, each recruit would select three choices from the vacancies in duty location. He stated if the recruit completed recruit school one of their three choices would be granted. Commissioner Clowe stated he would feel comfortable if oversight by a Commission member, someone from the leadership team and someone from outside provided oversight of the proposed process and provide the Commission update reports. He stated it may need to be changed in order to improve. Chairman Polunsky restated his concerns about the deviation from the PRT standards that the Commission's desire was recruits are 100% the day they report to school. Colonel stated the policy had not been implemented in the current class, but he guaranteed it would not happen again. They would rather have talent and not sacrifice quality. Commissioner Steen stated it would be helpful to have a number of the people critical to the discussion be at the meeting and defer the item. **A motion was restated by Commissioner Steen and seconded by Commissioner Clowe modifying the 26-week training school to an 18 week school, and to conduct a modified 8 week school for officers already TCLEOSE certified by which those candidates would be required six months under supervision of Field Training Supervisors. The motion passed unanimously.** Commissioner Steen requested the previous minutes on the discussion be provided in the discussion at the next meeting. He also asked about the rigidity of the minimum standards. Commissioner Clowe provided some historical background how the standards were developed and ultimately reasonably modified. Director McCraw stated upon graduation there was no deviation – if they did not meet the standards they did not graduate. Commissioner Steen asked for an example on deviation of the PRT and time allowed to get into shape. DAD Woodall explained if a recruit could not pass on day 1 they were dismissed. DAD White spoke on the PRT committee stating the recruiting process was changed to only allow those who could pass PRT at step 2 (step 1 was application). If they could not pass step 2 – they could not go to step 3. You must meet minimum standards in the filtering process; otherwise the investment was not worth the time, effort and money to spend on individuals who cannot pass the PRT. Commissioner Steen asked how many were in the current school but DAD Woodall did not have the information available. It was decided he would obtain the information and return later in the meeting. Commissioner Clowe complimented all on the in depth report, discussion and concern on this issue.

(01:27:30) Director McCraw, in the absence of AD MacBride addressed the agenda item pertaining to the request of Legislature to cut the budget 5%. He stated \$14.627 million was the

amount to be cut. He provided a spreadsheet of the recommendations to meet the budget cut request. The following are potential reduction targets: Texas Online, Driver Responsibility Program, Earned Fed Funds EST, 41 border vehicles and accessories, and local Border Security Overtime (TDEM). Colonel requested approval to respond to the Legislature with the proposed 5% reductions. **A motion was made by Commissioner Steen and seconded by Commissioner Barth to approve the proposed 5% recommendations. Motion passed unanimously.** For the record, Chairman Polunsky asked Director McCraw to confirm that positions, people and compensation would not be cut. Director McCraw stated they would not.

Director McCraw returned with the information on the number of recruits who failed the PRT upon entry into training academy. 24 out of 117 recruits failed in the first week of recruit school. Chairman Polunsky found that amount outrageous. He stated DPS was to recruit the quantity of applicants in order to produce high caliber troopers, of which the PRT was part of the curriculum and should not lower the standards.

(01:46:22) Director McCraw commented on the dedication ceremony of Building A of DPS Headquarter honoring Colonel Thomas A Davis, Jr. He stated the dedication stone would be delivered in the coming week and he would be meeting with Colonel Davis to determine a future date for the dedication ceremony.

Executive Session (1:47:21)

The Commission went into Executive Session to discuss security issues, to consult with legal counsel regarding pending or contemplated litigation or settlement offers or to receive legal advice on items posted on this agenda; deliberation regarding real estate matters; consideration of any other items authorized by law, including personnel matters, the Director's action of discharging employees as identified in this agenda; and ongoing criminal investigations. Executive Session began at 12:30 p.m. and ended at 3:11p.m.

Ongoing Business (1:54:51)

Chairman Polunsky reported U. S. Marshall Lafayette Collins was offered the position of Inspector General and he had accepted. He would commence employment on February 1, 2010. **A motion was made by Commissioner Clowe and seconded by Commissioner Steen to hire Lafayette Collins as Inspector General at a salary of \$147,500 effective February 1, 2010. The motion passed unanimously.**

No update to the DPS organization structure was necessary.

Deputy Director Rabel was not present to provide an update on the safety and security at the DPS headquarters on North Lamar. DAD Fulenwider reported the current status of TFC finalizing the survey and once the contract was signed, it could take approximately six weeks.

AD Cheryl MacBride was not present to give the operating budget report. Director McCraw stated the report was in the Commissioner's binders adding the LBB had authorized the funding for the helmets and additional body armor.

AD Tom Ruocco, CID presented the Seized Funds report in AD MacBride's absence recapping requested replacement items of one helicopter, one plane totaling \$5,313,958; and allowances for incidental costs related to seized property in the amount of \$316,000. A motion was made by Commissioner Clowe but not seconded. Further discussion followed on location of the helicopter and what Federal government statute stipulates seized funds could be used for and

reoccurring expenses. Commissioner Steen addressed the security need of fencing at Headquarters and preferred using the funds to improve conditions rather than acquire additional aircraft. **A motion was made by Commissioner Steen and seconded by Commissioner Barth approving the use of \$316,000 seized funds towards the incidental cost related to seized property and deferring the reservation of funds toward the helicopter and plane replacement purchases. The motion passed unanimously.** The motion was followed with an inquiry by Commissioner Steen about who the Board was overseeing Seized Funds use. Director McCraw responded he was on the Board and stated the funds could not be used for instance for a new building but could be used for improvements.

Chairman Polunsky requested a report on recruitment since the last meeting. DAD White, HR, reported pagers were upgraded to Blackberry's; the Chevy Tahoe was being moved ahead; and a www.join dps.com web domain was now operational. This website will allow having this on DPS vehicles, for interested candidates to see what positions are available. The website would also have a DPS recruiting video. He informed the Commission that the Army Reserve memorandum agreement had been signed in order to allow DPS to work with Army Reserve to list DPS positions on their website. DAD White met with the Army Brigade in an effort to recruit quality troopers. They will have a recruiting booth, climbing rock wall and Hummer provided at the Diamond Jubilee. February 11 a job fair will be attended at Norris Conference Center and also on February 8th DPS will participate in an Oklahoma job fair. He informed the Commission that Oklahoma was conducting reductions in force at their police and fire departments and they were conducting the job fair in an effort to help place those individuals.

DD Beckworth provided an update on the Diamond Jubilee Anniversary planning stating donation letters had been sent out. He displayed a commemorative pistol slide with DPS logo and sample of a badge presently for sale. He gave details on the yearbook and provided pamphlets for ordering. He detailed the memorial ride in which the first DPS badge issued and the badge of the first officer killed in the line of duty would be carried on this ride, stopping at Van Horn and Brenham, in honor of the two officers. The planning activities are going well. Chairman Polunsky asked that Legislators and media be notified in order for all to participate. Commissioner Steen asked about the firearm and DD Beckworth provided details stating the weapon was the gun the Troopers carried today. Commissioner Clowe commented on the outstanding work performed by the committee. Chairman Polunsky stated he was very encouraged.

Reports (2:34:34)

Due to the absence of several Assistant Directors no reports were presented on Finance, Audit & Inspection, Government Relations, Information Technology, and Administration.

Commissioner Clowe requested a Drivers License report from AD Kelley. AD Kelley gave an update on the civilian workforce model stating 92% of the supervisors and 81% of the total civilian business model personnel had been hired. Drivers License System Pilot II Phase roll-out program was completed December 9, 2009. He stated the N. Lamar DL office would be the model for all offices in order to process customers; therefore training the employees and setting up the offices is primary. Commissioner Steen inquired about the Drivers Responsibility Program, AD Kelley replied ongoing work had been conducted and a draft rule was worked on in order to move forward.

No updates were requested from Emergency Management, Highway Patrol, Intelligence & Counter Terrorism, Law Enforcement Support, and Texas Rangers. AD Bowie stated all CHL applications were current.

Consent items (2:45:19)

The Consent Items were discussed. Item C3 was pulled from the Consent item agenda. Items A, B, C 1&2, D 1&2 were not in debate or dispute. Item D3 was withdrawn by the Private Security Board.

A motion was made by Commissioner Barth and seconded by Commissioner Clowe to approve Consent items A, B, C 1&2, D 1, 2, 3 with exception of Rule 35.70. Motion passed unanimously.

Items for future agenda (2:48:33)

Commissioner Steen requested that a discussion be on the next agenda regarding the status of building safety and security at DPS headquarters

Future meeting date

The next meeting of the Public Safety Commission will be February 18, 2010 in Austin, Texas (2:49:52)

There being no further business, the meeting was adjourned at 4:07 p.m.

Read and approved this 31st day of March, 2010.



Chairman

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
Eva Santiago	Administrative Asst. I, Driver License Division	11/30/09
Donald White	Clerk III, Finance Division	12/16/09

Approved:

David P. Brown

Allan B. Polunsky, Chairman
Public Safety Commission

Date: January 29, 2010

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 29, 2010, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Texas Highway Patrol
Title 37 T.A.C. Part I, Chapter 3
Subchapter K
Section 3.171

The Texas Department of Public Safety (the department) adopts amendments to Section 3.171, concerning Parking and Traffic Administration without changes to the proposed text as published in the November 13, 2009 issue of the *Texas Register* (34 TexReg 7944).

Adoption of amendments to Section 3.171 are necessary in order to update the rule so that it reflects the new raised parking violation fine and late fee provided for by Texas Government Code, Section 411.067.


No comments were received regarding adoption of the amendments.

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 411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department; Texas Government Code, Section 411.062(d), which authorizes the department to adopt rules relating to the security of persons and property within the Capitol Complex; and Texas Government Code, Section 411.067 which provides for the assessment of fines.

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.


Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 29, 2010, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Controlled Substances
Title 37 T.A.C. Part I, Chapter 13
Subchapter D
Section 13.86

The Texas Department of Public Safety (the department) adopts the repeal of Section 13.86 concerning Communication with Director (Texas Prescription Program) without changes to the proposed text as published in the November 13, 2009 issue of the *Texas Register* (34 TexReg 7955).

Adoption of the repeal is necessary due to the simultaneous filing of a new Section 13.86. The repealed section has been renumbered as new Section 13.99 in a simultaneous filing.

No comments were received regarding the 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; Senate Bill 1879, Acts 2007, 80th Leg., R.S.; and Texas Health and Safety Code, Section 481.003.

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.


Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 29, 2010, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Controlled Substances
Title 37 T.A.C. Part I, Chapter 13
Subchapter A
Sections 13.1, 13.7 and 13.10

The Texas Department of Public Safety (the department) adopts amendments to Sections 13.1, 13.7 and 13.10, concerning General Provisions, without changes to the proposed text as published in the November 13, 2009 issue of the *Texas Register* (34 TexReg 7947).

Adoption of amendments to Section 13.1 is necessary in order to add new definitions for electronic transmission, health practitioner, locum tenen, temporary controlled substances registration, and stored. Adoption of amendments to Section 13.1 also reformats the section. Due to reorganization within the department, adoption of amendments to Section 13.7 and Section 13.10 are necessary in order to change the address, phone number and name of the bureau responsible for the Controlled Substances Program.

No comments were received regarding the adoption of these 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; Senate Bill 1879, 80th Legislature, 2007; and Texas Health and Safety Code, Section 481.003.

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.


Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 29, 2010, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Controlled Substances
Title 37 T.A.C. Part I, Chapter 13
Subchapter B
Sections 13.21, 13.25, 13.26, 13.28, and 13.30

The Texas Department of Public Safety (the department) adopts amendments to Sections 13.21, 13.25, 13.26, 13.28, and 13.30, concerning Registration without changes to the proposed text as published in the November 13, 2009 issue of the *Texas Register* (34 TexReg 7949).

Adoption of amendments to Section 13.21 is necessary to delete words "an annual" and insert "a" registration and require a registration for all registrants engaged in activities covered by the registration provisions of the Act and clarify that the activities performed must be in this state.

Adoption of amendments to Section 13.25 is necessary to clarify form numbers for different categories of registration.

Adoption of amendments to Section 13.26 is necessary to add the name of the emergency medical service medical director to the CSR certificate.

Adoption of amendments to Section 13.28 is necessary to add EMS Provider to fee exemption if qualified.

Adoption of amendments to Section 13.30 is necessary to establish expiration dates for certain controlled substances registrations.

No comments were received regarding the adoption of these 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; Senate Bill 1879, 80th Legislature, 2007; and Texas Health and Safety Code, Section 481.003.

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.


Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 29, 2010, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Controlled Substances
Title 37 T.A.C. Part I, Chapter 13
Subchapter D
Sections 13.71 – 13.73, 13.75, 13.76, 13.86 – 13.99

The Texas Department of Public Safety (the department) adopts amendments to Sections 13.71 - 13.73, 13.75, 13.76 and new Sections 13.91 - 13.93, 13.96 - 13.99 concerning Texas Prescription Program without changes to the proposed text as published in the November 13, 2009 issue of the *Texas Register* (34 TexReg 7951) and will not be republished. New Sections 13.86 - 13.90, 13.94, and 13.95 are adopted with changes and will be republished. Changes were made to new Sections 13.86 - 13.90, 13.94, and 13.95 based on comments the department received from the public which are summarized below.

Adoption of amendments to Section 13.71 is necessary to add the definition of “prescription” as defined in Section 481.002(41), Texas Health and Safety Code. No comments were received regarding adoption of these amendments. Section 13.71 is adopted without changes to the proposed text and will not be republished.

Adoption of amendments to Section 13.72 is necessary to change Official Prescription Program to Official Prescription Form for Schedule II Controlled Substances. No comments were received regarding adoption of these amendments. Section 13.72 is adopted without changes to the proposed text and will not be republished.

Adoption of amendments to Section 13.73 is necessary to add rules that govern the issuance of multiple prescriptions and change the word “may” to “must” on the use of the official prescription form when dispensing schedule II controlled substances. The department accepted comment on the proposed rules through December 16, 2009. Written comments were submitted by Allen W. Burton, MD representing the Texas Pain Society (TPS). The substantive comments, as well as the department’s responses thereto, are summarized below:

COMMENT: Regarding Section 13.73, the TPS recommends that Section 13.73(e)(3) “must include and “earliest fill date” on all multiple issued prescriptions” be modified to “must include an “earliest fill date”, ie. Do Not Fill Before (date) on all multiple prescriptions”.

RESPONSE: The department utilized language that copies that of the Code of Federal Regulations, 21 Part 1300 to End, Section 1306.12(a)(ii) regarding this requirement and believes that the language is clear in identifying when, other than the first prescription of multiple prescriptions for a Schedule II controlled substance, can be filled. The department is not in agreement with the TSP’s suggestion. Section 13.73 is adopted without changes to the proposed text and will not be republished.

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 29, 2010, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Controlled Substances
Title 37 T.A.C. Part I, Chapter 13
Subchapter G
Section 13.161

The Texas Department of Public Safety (the department) adopts an amendment to Section 13.161, concerning Forfeiture And Destruction without changes to the proposed text as published in the November 13, 2009 issue of the *Texas Register* (34 TexReg 7958).

Due to reorganization within the department, the amendment is adopted to change the name of the bureau responsible for the Controlled Substances Program.


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; Senate Bill 1879, Acts 2007, 80th Leg., R.S.; and Texas Health and Safety Code, Section 481.003.

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.



Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 29, 2010, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Controlled Substances
Title 37 T.A.C. Part I, Chapter 13
Subchapter N
Section 13.301, Section 13.304

The Texas Department of Public Safety (the department) adopts amendments to Section 13.301 and Section 13.304, concerning Administrative Penalties and Hearings without changes to the proposed text as published in the November 13, 2009 issue of the *Texas Register* (34 TexReg 7966).

Due to reorganization within the department, the amendments are adopted to change the name of the bureau responsible for the Controlled Substances Program.

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; Senate Bill 1879, Acts 2007, 80th Leg., R.S.; and Texas Health and Safety Code, Section 481.003.

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.



Allan B. Polunsky, Chair
Public Safety Commission

Adoption of amendments to Section 13.75 is necessary to add rules that govern the filling of multiple prescriptions and that all requirements of Section 481.074(k), Texas Health and Safety Code are met. No comments were received regarding adoption of these amendments. Section 13.75 is adopted without changes to the proposed text and will not be republished.

Adoption of amendments to Section 13.76 is necessary to identify the data elements that are required to be submitted to the director. The department accepted comment on the proposed rules through December 16, 2009. Written comments were submitted by Mary Staples representing the National Association of Chain Drug Stores and Kathy Barber representing the Texas Federation of Drug Stores. The substantive comments, as well as the department's responses thereto, are summarized below:

COMMENT: Regarding Section 13.76, "to make the rules addressing the electronic reporting requirements for Schedule II prescriptions consistent with the statute change, we ask that DPS revise 37 TAC Section 13.76(4) as follows: (4) the date the prescription was issued and filled, **or earliest fill date as appropriate;**"

RESPONSE: Texas Health and Safety Code, Section 481.074(d-1)(2), added by SB 904, 81st Legislature, 2009, addresses the requirement of a physician to indicate on subsequent official prescription forms the earliest date on which a pharmacy may fill the subsequent prescriptions if multiple prescriptions are written. Section 13.76(4) addresses the requirements of the pharmacist/pharmacy when reporting prescription data to the department and currently the department needs to know when the prescriptions are filled. The department is not in agreement with TFDS' recommendation. Section 13.76 is adopted without changes to the proposed text and will not be republished.

Adoption of new Section 13.86 sets forth who may obtain prescription forms and the registration requirements for Schedule III thru V Controlled Substances. New Section 13.86 is filed simultaneously with the repeal of current Section 13.86 which is being renumbered as new Section 13.99. The department accepted comment on the proposed rules through December 16, 2009. Written comments were submitted by Gay Dodson, R.Ph., Executive Director/Secretary representing the Texas State Board of Pharmacy (TSBP). The substantive comments, as well as the department's responses thereto, are summarized below:

COMMENT: Regarding Section 13.86, TSBP believes this section is unnecessary because current statute in the Texas Controlled Substances Act (the Act) allows these prescriptions to be communicated to a pharmacist using written, oral, telephonic or electric means.

RESPONSE: The department agrees with TSBP that current statute addresses how a prescription can be communicated to a pharmacist; however, new Section 13.86 is directed toward physicians, as defined by the Act, and their use of the written prescription for prescribing, and the requirements that the prescribing practitioner must possess a valid registration issued by the director and the Drug Enforcement Administration to prescribe controlled substances. New Section 13.86 is adopted with non-substantial modifications for clarification and will be republished.

Adoption of new Section 13.87 provides for the proper use of the prescription form. The department accepted comment on the proposed rules through December 16, 2009. Written comments were submitted by Gay Dodson, R.Ph., Executive Director/Secretary representing the Texas State Board of Pharmacy (TSBP), by Mary Staples representing the National Association of Chain Drug Stores (NACDS), and Kathy Barber

representing the Texas Federation of Drug Stores (TFDS). The substantive comments, as well as the department's responses thereto, are summarized below:

COMMENT: Regarding Section 13.87(a), TSBP believes this section is unnecessary because Texas Health and Safety Code, Section 481.074(k) in the Texas Controlled Substances Act (the Act) allows these prescriptions to be communicated to a pharmacist using written, oral, telephonic or electric means and Section 13.87(d)(2) of this title indicates that a practitioner "must ensure all information required in Section 481.074(k) of the Act, which includes the department registration number, is licensed in Texas, is included and is legible, to include the stamped or pre-printed instructions." TSBP states that the language "to include the stamped or pre-printed instructions" should not be in this section and is not part of the requirements of Section 481.074(k) of the Act.

RESPONSE: The department agrees with TSBP that Section 481.074(k) of the Act addresses how a prescription can be communicated to a pharmacist; however, this section is directed toward a physician's use of a written prescription presented to a pharmacist. The department agrees with the TSBP in that "to include the stamped or pre-printed instruction" is not part of the requirements of Section 481.074(k) of the Act and will remove the language from Section 13.79(a).

COMMENT: Regarding Section 13.87 by the NACDS and TFDS requested the addition of a Section 13.87(e) that would require a pharmacist to contact the practitioner or person under the practitioner's direction or supervision to clarify or obtain required information before filling the prescription and that the pharmacist record the information obtained on the original prescription.

RESPONSE: The department disagrees with the addition of Section 13.87(e) but agrees to modify Section 13.95 Pharmacy Responsibility – Questionable Prescriptions that accomplishes the same objective.

New Section 13.87 is adopted with changes to the proposed text and will be republished.

Adoption of new Section 13.88 provides for the exceptions to use of the form. The department accepted comment on the proposed rules through December 16, 2009. Written comments were submitted by Gay Dodson, R.Ph., Executive Director/Secretary representing the Texas State Board of Pharmacy (TSBP). The substantive comments, as well as the department's responses thereto, are summarized below:

COMMENT: Regarding Section 13.88, TSBP believes this section is unnecessary because current statute in the Texas Controlled Substances Act allows these prescriptions to be communicated to a pharmacist using written, oral, telephonic or electric means.

RESPONSE: The department agrees with TSBP that current statute addresses how a prescription can be communicated to a pharmacist; however, this section is directed toward a physician's use of a written prescription communicated to a pharmacist. New Section 13.88 is adopted with non-substantial modifications for clarification and will be republished.

Adoption of new Section 13.89 sets forth the pharmacy general responsibility upon receipt of a prescription. The department accepted comment on the proposed rules through December 16, 2009. Written comments were submitted by Gay Dodson, R.Ph., Executive Director/Secretary representing the Texas State Board of

Pharmacy (TSBP). The substantive comments, as well as the department's responses thereto, are summarized below:

COMMENT: Regarding Section 13.89, TSBP believes this section is unnecessary and misleading because current statute in the Texas Controlled Substances Act allows these prescriptions to be communicated to a pharmacist using written, oral, telephonic or electric means. In addition, the TSBP points out that Section 13.89(a)(4) specifies that a dispensing pharmacist should "sign the prescription" and that there is not such requirement for Schedule II-V controlled substance prescriptions.

RESPONSE: Again the department agrees with the TSBP that current statute addresses how a prescription can be communicated to a pharmacist; however, Section 13.89 is directed toward a physician's use of a written prescription communicated to a pharmacist. The department agrees with the TSBP that Section 13.89(a)(4) "sign the prescription" should not be in Section 13.89. New Section 13.89 is adopted with non-substantial modifications for clarification and will be republished.

Adoption of new Section 13.90 sets forth the pharmacy responsibility for the electronic reporting of the data elements required to be submitted to the director. The department accepted comment on the proposed rules through December 16, 2009. Written comments were submitted by Gay Dodson, R.Ph., Executive Director/Secretary representing the Texas State Board of Pharmacy (TSBP), by Mary Staples representing the National Association of Chain Drug Stores (NACDS), and Kathy Barber representing the Texas Federation of Drug Stores (TFDS). The substantive comments, as well as the department's responses thereto, are summarized below:

COMMENT: Regarding Section 13.90, TSBP recognizes this rule requires pharmacist to submit certain information to the department for Schedule III-V prescriptions. One of the items to be sent is the department registration number. Prescriptions from out-of-state practitioners do not have a department registration number. The TSPB recommends that the requirements in this section be amended to include "if the practitioner is not registered in Texas, then the DPS registration number should be entered as 90140100".

RESPONSE: The department disagrees with this recommendation. The department has utilized several different "place holders" for this information to indicate an out-of-state prescription. Database changes currently being considered by the department may require a change in this procedure, making a rule with this type of specific recommended information would create issues for the department in the future.

COMMENT: Regarding Section 13.90(1), TFDS and NACDS recommend that new language "unless the prescription was issued by a practitioner in another state as permitted under 37 TAC Section 13.96" be added to this section.

RESPONSE: The department agrees with this recommendation and will add the new language for clarification. New Section 13.90 is adopted with new language for clarification and will be republished.

Adoption of new Section 13.91 sets forth the electronic compatible devices that may be used to transmit the data elements to the director. No comments were received regarding adoption of this new section. New Section 13.91 is adopted without changes to the proposed text and will not be republished.

Adoption of new Section 13.92 provides for a waiver from electronic reporting if certain minimum standards are met and the director approves the waiver. No comments were received regarding adoption of this new section. New Section 13.92 is adopted without changes to the proposed text and will not be republished.

Adoption of new Section 13.93 sets forth the pharmacy responsibility for non-electronic reporting. No comments were received regarding adoption of this new section. New Section 13.93 is adopted without changes to the proposed text and will not be republished.

Adoption of new Section 13.94 sets forth the pharmacy responsibility for dispensing a Schedule III-V controlled substance in an emergency situation. The department accepted comment on the proposed rules through December 16, 2009. Written comments were submitted by Gay Dodson, R.Ph., Executive Director/Secretary representing the Texas State Board of Pharmacy (TSBP). The substantive comments, as well as the department's responses thereto, are summarized below:

COMMENT: Regarding Section 13.94, TSBP believes this section is unnecessary for prescriptions for Schedule III-V controlled substances since under normal circumstances these prescriptions may be transmitted to a pharmacy in written, oral, telephonic or electronic format.

RESPONSE: The department agrees with TSPB comment as it relates to the various methods of how Schedule III-V prescriptions may be transmitted to a pharmacist in any situation. New Section 13.94 is adopted with non-substantial changes reflecting that this section addresses oral or telephonic transmission of prescriptions and the pharmacist's responsibility of proper documentation of oral and telephonic prescriptions and will be republished.

Adoption of new Section 13.95 sets forth the pharmacy responsibility upon receipt of a questionable prescription. No comments were received regarding adoption of this new section; however, due to the comments received regarding Section 13.87 by the TFDS and NACDS Section 13.95 was modified to accommodate the requested change in Section 13.87 and will be republished. The substantive comments, as well as the department's responses thereto, are summarized below:

COMMENT: Regarding Section 13.87, NACDS and TFDS requested the addition of 13.87(e) requiring a pharmacist to contact the practitioner or person under the practitioner's direction or supervision to clarify or obtain required information before filling the prescription and that the pharmacist records the information obtained on the original prescription.

RESPONSE: The department disagrees with the addition of a Section 13.87(e) but agrees to modify Section 13.95 Pharmacy Responsibility – Questionable Prescriptions that would accomplish the same objective. New Section 13.95 is modified for clarification and will be republished.

Adoption of new Section 13.96 sets forth the pharmacy responsibility upon receipt of a prescription issued by a practitioner in another state. No comments were received regarding adoption of this new section. New Section 13.96 is adopted without changes to the proposed text and will not be republished.

Adoption of new Section 13.97 sets forth the persons to whom the director may release non-statistical information and the requirements that the person must meet. No comments were received regarding adoption

of this new section. New Section 13.97 is adopted without changes to the proposed text and will not be republished.

Adoption of new Section 13.98 sets forth the circumstances and conditions under which the director may delete or return a schedule III-V controlled substance to the prescription program. No comments were received regarding adoption of this new section. New Section 13.98 is adopted without changes to the proposed text and will not be republished.

Adoption of new Section 13.99 sets forth the procedures and information a person may use to communicate with the director reference the Texas Prescription Program. No comments were received regarding adoption of this new section. New Section 13.99 is adopted without changes to the proposed text and will not be republished.

In addition, the title of this subchapter is changed to "Texas Prescription Program."

The amendments and new sections are adopted pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Senate Bill 1879, 80th Legislature, 2007; Senate Bill 904, 81st Legislature, 2009; and Texas Health and Safety Code, Section 481.003.

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.



Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 29, 2010, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Controlled Substances
Title 37 T.A.C. Part I, Chapter 13
Subchapter F
Sections 13.131 – 13.134 and 13.137

The Texas Department of Public Safety (the department) adopts amendments to Sections 13.131 - 13.134 and 13.137, concerning Application without changes to the text as published in the November 13, 2009 issue of the *Texas Register* (34 TexReg 7956).

Adoption of amendments to Section 13.131 is necessary to add temporary controlled substances registration (TCSR) to Application definitions.

Adoption of amendments to Section 13.132 is necessary to add change in temporary business address by locum tenen or health practitioner as information needed to be updated as required by Section 13.208 and clarify who may act as a supervising physician for a mid-level practitioner in a medical facility.

Adoption of amendments to Section 13.137 add denial as an option if the modification of a registration does not meet the requirements of this section or violates a ground of denial as described in the Act, Section 481.063(e).

Due to reorganization within the department, additional amendments are adopted to change the name of the bureau responsible for the Controlled Substances Program.

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; Senate Bill 1879, Acts 2007, 80th Leg., R.S.; and Texas Health and Safety Code, Section 481.003.

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.


Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 29, 2010, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Controlled Substances
Title 37 T.A.C. Part I, Chapter 13
Subchapter H
Section 13.182

The Texas Department of Public Safety (the department) adopts an amendment to Section 13.182 concerning Security without changes to the proposed text as published in the November 13, 2009 issue of the *Texas Register* (34 TexReg 7959).

Amendment to Section 13.182 is necessary to clarify the manner that an emergency medical locker is to be secured to a conveyance.

No comments were received regarding adoption of the amendments.

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; Senate Bill 1879, Acts 2007, 80th Leg., R.S.; and Texas Health and Safety Code, Section 481.003.

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.



Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 29, 2010, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Controlled Substances
Title 37 T.A.C. Part I, Chapter 13
Subchapter I
Section 13.208

The Texas Department of Public Safety (the department) adopts an amendment to Section 13.208, concerning Record Keeping without changes to the proposed text as published in the November 13, 2009 issue of the *Texas Register* (34 TexReg 7960).

Adoption of the amendment to Section 13.208 adds temporary registration holder as a person required to update certain information to the director.

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; Senate Bill 1879, Acts 2007, 80th Leg., R.S.; and Texas Health and Safety Code, Section 481.003.

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.



Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 29, 2010, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Controlled Substances
Title 37 T.A.C. Part I, Chapter 13
Subchapter K
Sections 13.233, 13.234 and 13.237

The Texas Department of Public Safety (the department) adopts amendments to Sections 13.233, 13.234 and 13.237, concerning Inspection without changes to the proposed text as published in the November 13, 2009 issue of the *Texas Register* (34 TexReg 7961).

Adoption of the amendment to Section 13.233 is necessary in order to include each member of the Narcotics Regulatory Program as a person authorized to inspect a controlled premise.

Adoption of amendments to Section 13.234 is necessary to reformat the section to add new subsections (b) and (c). The new subsections set forth the time period in which records required to be maintained on site must be produced for inspection by the director and refer to the CFR for off site record keeping requirements.

Due to reorganization within the department, amendment to Section 13.237 is adopted to change the name of the bureau responsible for the Controlled Substances Program.

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; Senate Bill 1879, Acts 2007, 80th Leg., R.S.; and Texas Health and Safety Code, Section 481.003.

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.


Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 29, 2010, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Controlled Substances
Title 37 T.A.C. Part I, Chapter 13
Subchapter L
Section 13.253, Section 13.254

The Texas Department of Public Safety (the department) adopts amendments to Section 13.253 and Section 13.254, concerning Reporting Discrepancy, Loss, Theft, Or Diversion without changes to the proposed text as published on November 13, 2009 in the *Texas Register* (34 TexReg 7962).

Due to reorganization within the department, amendments are adopted to change the name of the bureau responsible for the Controlled Substances Program. Adoption of the amendment to Section 13.254 sets forth the information required to be reported to the director by the practitioner on all lost/replacement official prescriptions.

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; Senate Bill 1879, Acts 2007, 80th Leg., R.S.; and Texas Health and Safety Code, Section 481.003.

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.


Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 29, 2010, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Controlled Substances
Title 37 T.A.C. Part I, Chapter 13
Subchapter M
Sections 13.272 – 13.276 and 13.278

The Texas Department of Public Safety (the department) adopts amendments to Sections 13.272 – 13.276 and 13.278, concerning Denial, Revocation, And Related Disciplinary Action without changes to the proposed text as published in the November 13, 2009 issue of the *Texas Register* (34 TexReg 7963).

Adoption of amendments to the sections add “unless otherwise stated in the Act” to each action to be taken in order to more fully comply with the Act and clarify a hearing request upon receiving probation under this section.


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; Senate Bill 1879, Acts 2007, 80th Leg., R.S.; and Texas Health and Safety Code, Section 481.003.

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.


Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 29, 2010, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Private Security
Title 37 T.A.C. Part I, Chapter 35
Subchapter C
Section 35.42

The Texas Department of Public Safety (the department) adopts amendments to Section 35.42, concerning Standards without changes to the proposed text as published in the November 27, 2009 issue of the *Texas Register* (34 TexReg 8465).

Adoption of the amendments to Section 35.42 is necessary in order to provide greater discretion to the Private Security Bureau Manager in applying the rule's guidelines (relating to disqualifying Class B misdemeanors). The rule is also amended in order to modify those guidelines. Adoption of this amendment provides greater guidance to the Bureau staff, the regulated industry, and prospective applicants regarding the Class B misdemeanor offenses considered by the Board to be disqualifying for purposes of licensure under the Private Security Act (Chapter 1702, Texas Occupations Code).

No comments were received regarding the adoption of these amendments.

These amendments are adopted under 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 Occupations Code, Section 1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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.


Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 29, 2010, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Private Security
Title 37 T.A.C. Part I, Chapter 35
Subchapter C
Section 35.43

The Texas Department of Public Safety (the department) adopts amendments to Section 35.43 concerning Standards without changes to the proposed text as published in the November 27, 2009 issue of the *Texas Register* (34 TexReg 8467).

Adoption of the amendments is necessary to conform the guidelines to those provided in adopted Rule 35.46 of this title (relating to Convictions), and to provide greater discretion to the Private Security Bureau Manager in applying the rule's guidelines. Adoption of these amendments will provide guidance to the Bureau staff, the regulated industry, and prospective applicants regarding the nature of the discharges considered by the Board to be disqualifying for purposes of licensure under the Private Security Act (Chapter 1702, Texas Occupations Code).

No comments were received regarding the adoption of these amendments.

These amendments are adopted under 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 Occupations Code, Section 1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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.


Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 29, 2010, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Private Security
Title 37 T.A.C. Part I, Chapter 35
Subchapter C
Section 35.46

The Texas Department of Public Safety adopts new Section 35.46 concerning Standards without changes to the proposed text as published in the November 27, 2009 issue of the *Texas Register* (34 TexReg 8467).

Adoption of the new section is necessary in order to comply with the 81st Legislature's mandate to adopt rules in compliance with Chapter 53 of the Texas Occupations Code, affected by House Bill 2730, Section 4.02 (amending Section 1702.004(b) of the Texas Occupations Code). This new section provides guidance to the Bureau staff, the regulated industry, and prospective applicants regarding the criminal offenses considered by the Board to be related to the various regulated security fields, for purposes of licensure under the Private Security Act (Chapter 1702, Texas Occupations Code).

No comments were received regarding the adoption of this new section.

This 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 Occupations Code, Section 1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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.


Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 29, 2010, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Private Security
Title 37 T.A.C. Part I, Chapter 35
Subchapter E
Section 35.71

The Texas Department of Public Safety (the department) adopts amendments to Section 35.71, concerning Operation without Manager without changes to the proposed text as published in the November 27, 2009 issue of the *Texas Register* (34 TexReg 8470).

Adoption of amendments is necessary in order to clarify the statutory language of Section 1702.121 of the Texas Occupations Code recently amended by House Bill 2730. These amendments will provide guidance to the Bureau staff and the regulated industry, by clarifying the point at which the limited period of temporary operation begins, and that the statute's reference to "termination" of the manager is meant to refer only to the termination of managerial duties, not to employment *per se*.


No comments were received regarding the adoption of these amendments.

These 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 Occupations Code, Section 1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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.



Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 29, 2010, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Private Security
Title 37 T.A.C. Part I, Chapter 35
Subchapter E
Section 35.72

The Texas Department of Public Safety (the department) adopts amendments to Section 35.72, concerning Fingerprint Submissions without changes to the proposed text as published in the November 27, 2009 issue of the *Texas Register* (34 TexReg 8471).

Adoption of amendments is necessary in order to eliminate the requirement that fingerprints be submitted on department-provided fingerprint cards and to authorize the submission of electronic fingerprints.

No comments were received regarding the adoption of these amendments.

These 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 Occupations Code, Section 1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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.


Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 29, 2010, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Private Security
Title 37 T.A.C. Part I, Chapter 35
Subchapter L
Section 35.182

The Texas Department of Public Safety (the department) adopts the repeal of Section 35.182, concerning Fingerprints without changes to the proposed text as published in the *Texas Register* (34 TexReg 8472).

Adoption of the repeal eliminates provisions rendered redundant by other rule amendments.

No comments were received regarding the adoption of this repeal.

This repeal is adopted pursuant to Texas Government Code, Section 411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, Section 1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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.



Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 29, 2010, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Private Security
Title 37 T.A.C. Part I, Chapter 35
Subchapter L
Section 35.185

The Texas Department of Public Safety (the department) adopts amendments to Section 35.185, concerning Registration Deadline without changes to the proposed text as published in the November 27, 2009 issue of the *Texas Register* (34 TexReg 8472).

Adoption of amendments is necessary to clarify the statutory language of Section 1702.230 of the Texas Occupations Code, recently amended by House Bill 2730. Adoption of this amendment provides guidance to the Bureau staff and the regulated industry, by clarifying the required components of an application for registration and ensuring that the department has sufficient information from prospective registrants prior to their being employed in a regulated capacity.

No comments were received regarding the adoption of these amendments.

These 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 Occupations Code, Section 1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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.



Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 29, 2010, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Private Security
Title 37 T.A.C. Part I, Chapter 35
Subchapter M
Section 35.202

The Texas Department of Public Safety (the department) adopts amendments to Section 35.202, concerning Location of Records without changes to the proposed text as published in the November 27, 2009 issue of the *Texas Register* (34 TexReg 8473).

Adoption of amendments is necessary to clarify the statutory language of Section 1702.110 and Section 1702.127 of the Texas Occupations Code, as amended by House Bill 2730. The amendments are intended to provide alternatives for out-of-state licensees, pursuant to HB 2730's creation of new Section 1702.110(b) and Section 1702.127(d). This rule amendment will provide guidance to the departmental staff and the regulated industry, by clarifying the requirements imposed by these statutory amendments.

No comments were received regarding the adoption of these amendments.

These 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 Occupations Code, Section 1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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.


Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 29, 2010, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Private Security
Title 37 T.A.C. Part I, Chapter 35
Subchapter Q
Sections 35.251 - 35.253, 35.256, 35.257, 35.260 – 35.265, and 35.267

The Texas Department of Public Safety (the department) adopts the repeal of Sections 35.251 – 35.253, 35.256, 35.257, 35.260 – 35.265, and 35.267, concerning Training without changes to the proposed text as published in the November 27, 2009 issue of the *Texas Register* (34 TexReg 8474). This repeal is filed simultaneously with an adoption of new Subchapter Q, Sections 35.251 – 35.253, 35.256, 35.257, 35.260 – 35.265, and 35.267 which promulgates revised provisions for training.

Adoption of the repeal is necessary to address public safety issues and to accommodate industry concerns relating to the training requirements imposed on the private security industry.

No comments were received regarding the adoption of this repeal.

These 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 Occupations Code, Section 1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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.


Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 29, 2010, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Private Security
Title 37 T.A.C. Part I, Chapter 35
Subchapter Q
Sections 35.251 - 35.253, 35.256, 35.257, 35.260 – 35.265, and 35.267

The Texas Department of Public Safety (the department) adopts new Sections 35.251 - 35.253, 35.256, 35.257, 35.260 – 35.265, and 35.267 concerning Training without any changes to the proposed text as published in the November 27, 2009 issue of the *Texas Register* (34 TexReg 8474).

Adoption of the amendments is necessary to address public safety issues and to accommodate industry concerns relating to the training requirements imposed on the private security industry.

No comments were received regarding the adoption of these amendments.

These new rules 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 Occupations Code, Section 1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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.


Allan B. Polunsky, Chair
Public Safety Commission

TEXAS DEPARTMENT OF PUBLIC SAFETY
ORDER ADOPTING A RULE

On January 29, 2010, the Public Safety Commission (Commission) by majority vote approved rules concerning:

Private Security
Title 37 T.A.C. Part I, Chapter 35
Subchapter U
Section 35.311

The Texas Department of Public Safety (the department) adopts amendments to Section 35.311, concerning Exemptions without changes to the proposed text as published in the November 27, 2009 issue of the *Texas Register* (34 TexReg 8478).

Adoption of the amendments clarify the scope of the statutory language of Texas Occupations Code, Section 1702.1056 and Section 1702.2227, relating to the definition of locksmith services. The amendment is intended to clarify that installation of a pre-keyed lockset does not constitute locksmith services for purposes of the Private Security Act.

No comments were received regarding the adoption of these amendments.

These 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 Occupations Code, Section 1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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.



Allan B. Polunsky, Chair
Public Safety Commission