

SUMMARY OF PROPOSED RULE

37 Tex. Admin. Code § 211.16. *Establishment or Continued Operation of an Appointing Entity.*
This proposed amendment would allow law enforcement agencies in existence before June 1, 2024, to use personally owned patrol vehicles.

RESUMEN DE LA NORMA PROPUESTA

37 Tex. Admin. Code § 211.16. *Establecimiento o Funcionamiento Continuo de Una Entidad Nominadora.*

Esta enmienda propuesta permitiría a las agencias policiales existentes antes del 1 de junio de 2024 utilizar vehículos de patrulla de su propiedad.

PUBLICATION IN *TEXAS REGISTER*

The Texas Commission on Law Enforcement (Commission) proposes amended 37 Texas Administrative Code §211.16, Establishment or Continued Operation of an Appointing Entity. This proposed amended rule conforms with the amendments made to Texas Occupations Code §1701.163 by Senate Bill 1445 (88R). The proposed amended rule would allow law enforcement agencies in existence before June 1, 2024, to use personally owned patrol vehicles.

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be a positive benefit to the public by conforming with Texas Occupations Code §1701.163 to establish minimum standards with respect to the creation or continued operation of a law enforcement agency. There will be no anticipated economic costs to persons required to comply with the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no adverse economic effects to small businesses, microbusinesses, or rural communities as a result of implementing the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no effects to a local economy as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

- (1) the proposed rule does not create or eliminate a government program;
- (2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rule does not require an increase or decrease in fees paid to the agency;

- (5) the proposed rule does not create a new regulation;
- (6) the proposed rule does not expand, limit, or repeal an existing regulation;
- (7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) the proposed rule does not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposed amended rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. John P. Beauchamp, General Counsel, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amended rule is proposed pursuant to Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.163, Minimum Standards for Law Enforcement Agencies. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701. Texas Occupations Code §1701.163 requires the Commission to adopt rules to establish minimum standards with respect to the creation or continued operation of a law enforcement agency.

The amended rule as proposed affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.163, Minimum Standards for Law Enforcement Agencies. No other code, article, or statute is affected by this proposal.

The proposed amended rule has been reviewed by legal counsel and has been found to be within the Commission's authority to adopt.

§211.16. Establishment or Continued Operation of an Appointing Entity.

(a) To establish that an agency or a prospective agency meets the minimum standards for the creation or continued operation of a law enforcement agency, the agency must provide evidence that the agency:

- (1) provides public benefit to the community;
- (2) has sustainable funding sources that meet or exceed the continued operating expenses outlined in a line-item budget for the agency;
- (3) has physical resources available to officers, including:
 - (A) at least one firearm per officer on duty;
 - (B) at least one less lethal force weapon per officer on duty;
 - (C) effective communications equipment, specifically:
 - (i) at least one radio communication device per officer on duty performing patrol, courtroom security, traffic enforcement, responding to calls for service, assigned to a controlled access point, acting as a visual deterrent to crime, surveillance, warrant execution, and service of civil process; and
 - (ii) at least one cell phone device per officer on duty who may have contact with the general public and is not performing any of the duties described in (i);
 - (D) at least one bullet-resistant vest per officer on duty with vest panels that:
 - (i) have been certified as compliant by the National Institute of Justice (NIJ);

(ii) are within the ballistic performance warranty period listed by the manufacturer on the affixed tags; and

(iii) have never been shot or otherwise compromised;

(E) at least one uniform per officer whose duties include any of the following:

(i) performing patrol;

(ii) courtroom security;

(iii) traffic enforcement;

(iv) responding to calls for service;

(v) assigned to a controlled access point;

(vi) acting as a visual deterrent to crime;

(vii) warrant execution; or

(viii) service of civil process;

(F) at least one motor vehicle owned and insured by an agency created on or after June 1, 2024; and

(G) patrol vehicles provided to officers whose duties include either performing patrol, traffic enforcement, or responding to calls for service that~~[owned, insured, and equipped by the agency and provided to officers whose duties include any of the following]:~~

(i) are owned, insured, and equipped by the agency~~[performing patrol]; or~~

(ii) may be personally owned for agencies in existence before June 1, 2024, that have not provided agency-owned patrol vehicles from June 1, 2024, to the present~~[traffic enforcement; or~~

~~(iii) responding to calls for service];~~

(4) has physical facilities, including:

(A) an evidence room or other acceptable secure evidence storage for officers whose duties include any of the following:

(i) performing patrol;

(ii) traffic enforcement;

(iii) criminal investigations;

(iv) responding to calls for service; or

(v) executing search or arrest warrants;

(B) a dispatch area for any agency appointing and employing telecommunicators; and

(C) a public area including written notices posted and visible 24 hours a day explaining:

(i) how to receive the most immediate assistance in an emergency;

(ii) how to make a nonemergency report of a crime; and

(iii) how to make a compliment or complaint on a member of the agency by mail, online, or by phone;

(5) has policies, including policies on:

(A) use of force;

(B) vehicle pursuit;

(C) professional conduct of officers;

(D) domestic abuse protocols;

(E) response to missing persons;

(F) supervision of part-time officers;

(G) impartial policing;

(H) medical and psychological examination of licensees;

(I) active shooters;

(J) barricaded subjects;

- (K) evidence collection and handling;
 - (L) eyewitness identification;
 - (M) misconduct investigations;
 - (N) hiring a license holder;
 - (O) personnel files;
 - (P) uniform and dress code;
 - (Q) training required to maintain licensure; and
 - (R) outside and off-duty employment;
- (6) has an established administrative structure, including:
- (A) an organizational chart for the agency that illustrates the division and assignment of licensed and unlicensed personnel;
 - (B) a projection for the number of full-time peace officers, part-time peace officers, and unpaid peace officers that the agency would employ during the year if at full staffing; and
 - (C) the number of School Resource Officer (SRO) positions employed by the agency and working in schools if the agency is not an independent school district (ISD) police department;
- (7) has liability insurance for the agency and any[its] vehicles used for agency purposes;
- (8) has a defined process by which the agency will receive by mail, online, and by phone and document compliments and complaints on its employees; and
- (9) any other information the commission requires.
- (b) An entity authorized by law to establish a law enforcement agency and appoint licensees must first complete training offered and required by the commission on the establishment and continued operation of a new agency. The entity may then make application for an agency number by submitting the current agency number application form, any associated application fee, and evidence that they meet the requirements of this rule.
- (c) An entity authorized by Local Government Code, §361.022 to operate a correctional facility to house inmates, in this state, convicted of offenses committed against the laws of another state of the United States, and appoint jailers requiring licensure by the commission, may make application for an agency number by submitting the current agency number application form, any associated application fee, and a certified copy of the contract under which the facility will operate.
- (d) A political subdivision wanting to establish a consolidated emergency telecommunications center and appoint telecommunicators, as required by Texas Occupations Code, §1701.405, may make application for an agency number by submitting the current agency number application form, any associated application fee and a certified copy of the consolidation contract.
- (e) The Texas Department of Criminal Justice - Pardon and Parole Division, a community supervision and corrections department, or a juvenile probation department may make application for an agency number if seeking firearms training certificates for parole officers, community supervision and corrections officers, or juvenile probation officers by submitting the current agency number application form and any associated application fee.
- (f) All law enforcement agencies must complete and submit an annual report due between January 1st and March 1st of each year documenting their continued compliance with the requirements of this rule.
- (g) The effective date of this section for agencies not in existence before June 1, 2024, is June 1, 2024. The effective date of this section for agencies already in existence before June 1, 2024, is September 1, 2025.