

SUMMARY OF PROPOSED RULES

37 Tex. Admin. Code § 211.1. *Definitions.*

This proposed amendment would add four definitions and add language to one definition for terms used in the proposed amendment to 37 Tex. Admin. Code § 211.16.

37 Tex. Admin. Code § 211.16. *Establishment or Continued Operation of an Appointing Entity.*

This proposed amendment was developed with input from an advisory committee and would outline the minimum standards for the creation or continued operation of a law enforcement agency.

RESUMEN DE LAS NORMAS PROPUESTAS

37 Tex. Admin. Code § 211.1. *Definiciones.*

Esta enmienda propuesta agregaría cuatro definiciones y agregaría lenguaje a una definición para los términos utilizados en la enmienda propuesta a 37 Tex. Admin. Code § 211.16.

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

Esta enmienda propuesta fue desarrollada con el aporte de un comité asesor y describiría los estándares mínimos para la creación o el funcionamiento continuo de una agencia de aplicación de la ley.

PUBLICATION IN *TEXAS REGISTER*

The Texas Commission on Law Enforcement (Commission) proposes amended 37 Texas Administrative Code §211.1, Definitions, and §211.16, Establishment or Continued Operation of an Appointing Entity. These proposed amended rules conform with the amendments to Texas Occupations Code §1701.163 made by Senate Bill 1445 (88R). The proposed amended rules outline the minimum standards for the creation or continued operation of a law enforcement agency.

These proposed amended rules were developed with input from an advisory committee as required by Texas Occupations Code §1701.163. The Minimum Standards for Law Enforcement Agencies Advisory Committee was charged under Texas Occupations Code §1701.163 with developing rules to establish minimum standards with respect to the creation or continued operation of a law enforcement agency based on the function, size, and jurisdiction of the agency.

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years these proposed amended rules 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 amendments.

Mr. Beauchamp has determined that for each year of the first five years these proposed amended rules 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 may be economic costs to persons

required to comply with the proposed amendments by requiring that each law enforcement agency possess at least one motor vehicle owned and insured by the agency. This part of the rule is necessary to protect the health, safety, and welfare of the residents of this state by facilitating an officer's ability to fulfill law enforcement duties and functions.

Mr. Beauchamp has determined that for each year of the first five years these proposed amended rules 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 amendments.

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

Mr. Beauchamp has determined the following:

- (1) the proposed rules do not create or eliminate a government program;
- (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rules do not require an increase or decrease in fees paid to the agency;
- (5) the proposed rules do not create a new regulation;
- (6) the proposed rules may expand an existing regulation, but do not limit or repeal an existing regulation, by requiring that each law enforcement agency possess at least one motor vehicle owned and insured by the agency;
- (7) the proposed rules do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) the proposed rules do not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposed amended rules. 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 rules are 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 rules as proposed affect or implement 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 rules have been reviewed by legal counsel and have been found to be within the Commission's authority to adopt.

§211.1. Definitions.

(a) The following words and terms, when used in this part, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Academic alternative program--A program for college credit offered by a training provider recognized by the Southern Association of Colleges and Schools or its successors and the Texas Higher Education Coordinating Board, authorized by the commission to conduct preparatory law enforcement training as part of a degree plan program, and consisting of commission-approved curricula.

(2) Academic provider--A school, accredited by the Southern Association of Colleges and Schools or its successors and the Texas Higher Education Coordinating Board, which has been approved by the commission to provide basic licensing courses.

(3) Accredited college or university--An institution of higher education that is accredited or authorized by the Southern Association of Colleges and Schools, the Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges, the North Central Association of Colleges and Schools, the Northwest Commission on Colleges and Universities, the Western Association of Schools and Colleges or its successors, or an international college or university evaluated and accepted by a United States accredited college or university.

(4) Active--A license issued by the commission that meets the current requirements of licensure and training as determined by the commission.

(5) Administrative Law Judge (ALJ)--An administrative law judge appointed by the chief administrative law judge of the State Office of Administrative Hearings.

(6) Agency--A law enforcement unit or other entity, whether public or private, authorized by Texas law to appoint a person licensed or certified by the commission.

(7) Appointed--Elected or commissioned by an agency as a peace officer, reserve or otherwise selected or assigned to a position governed by the Texas Occupations Code, Chapter 1701, without regard to pay or employment status.

(8) Background investigation--An investigation completed by the enrolling or appointing entity into an applicant's personal history as set forth in §217.1(b)(10).

(9) Basic licensing course--Any current commission developed course that is required before an individual may be licensed by the commission.

(10) Certified copy--A true and correct copy of a document or record certified by the custodian of records of the submitting entity.

(11) Chief administrator--The head or designee of a law enforcement agency.

(12) Commission--The Texas Commission on Law Enforcement.

(13) Commissioned--Has been given the legal power to act as a peace officer or reserve, whether elected, employed, or appointed.

(14) Commissioners--The nine commission members appointed by the governor.

(15) Contract jail--A correctional facility, operated by a county, municipality or private vendor, operating under a contract with a county or municipality, to house inmates convicted of offenses committed against the laws of another state of the United States, as provided by Texas Government Code, §511.0092.

(16) Contract Jailer--A person licensed as a Jailer in a Contract Jail or employed by an agency outside of a County Jail whose employing agency provides services inside of a County Jail which would require the person to have a Jailer License.

(17) Contractual training provider--A law enforcement agency or academy, a law enforcement association, alternative delivery trainer, distance education, academic alternative, or proprietary training provider that conducts specific education and training under a contract with the commission.

(18) Convicted--Has been adjudged guilty of or has had a judgment of guilt entered in a criminal case that has not been set aside on appeal, regardless of whether:

(A) the sentence is subsequently probated and the person is discharged from probation;

(B) the charging instrument is dismissed and the person is released from all penalties and disabilities resulting from the offense; or

(C) the person is pardoned, unless the pardon is expressly granted for subsequent proof of innocence.

(19) Community supervision--Any court-ordered community supervision or probation resulting from a deferred adjudication or conviction by a court of competent jurisdiction. However, this does not include supervision resulting from a pretrial diversion.

(20) Diploma mill--An entity that offers for a fee with little or no coursework, degrees, diplomas, or certificates that may be used to represent to the general public that the individual has successfully completed a program of secondary education or training.

(21) Distance education--Study, at a distance, with an educational provider that conducts organized, formal learning opportunities for students. The instruction is offered wholly or primarily by distance study, through virtually any media. It may include the use of: videotapes, DVD, audio recordings, telephone and email communications, and Web-based delivery systems.

(22) Duty ammunition--Ammunition required or permitted by the agency to be carried on duty.

(23) Executive director--The executive director of the commission or any individual authorized to act on behalf of the executive director.

(24) Experience--Includes each month, or part thereof, served as a peace officer, reserve, jailer, telecommunicator, or federal officer. Credit may, at the discretion of the executive director, be awarded for relevant experience from an out-of-state agency.

(25) Family Violence--In this chapter, has the meaning assigned by Chapter 71, Texas Family Code.

(26) Field training program--A program intended to facilitate a transition from the academic setting to the performance of the general duties of the appointing agency.

(27) Firearms--Any handgun, shotgun, precision rifle, patrol rifle, or fully automatic weapon that is carried by the individual officer in an official capacity. Conducted energy devices (CEDs) are not firearms.

(28) Firearms proficiency--Successful completion of the annual firearms proficiency requirements.

(29) Fit for duty review--A formal specialized examination of an individual, appointed to a position governed by the Texas Occupations Code, Chapter 1701, without regard to pay or employment status, to determine if the appointee is able to safely and/or effectively perform essential job functions. The basis for these examinations should be based on objective evidence and a reasonable basis that the cause may be attributable to a medical and/or psychological condition or impairment. Objective evidence may include direct observation, credible third party reports; or other reliable evidence. The review should come after other options have been deemed

inappropriate in light of the facts of the case. The selected Texas licensed medical doctor or psychologist, who is familiar with the duties of the appointee, conducting an examination should be consulted to ensure that a review is indicated. This review may include psychological and/or medical fitness examinations.

(30) High School Diploma--An earned high school diploma from a United States high school, an accredited secondary school equivalent to that of United States high school, or a passing score on the general education development test indicating a high school graduation level. Documentation from diploma mills is not acceptable.

(31) Home School Diploma--An earned diploma from a student who predominately receives instruction in a general elementary or secondary education program that is provided by the parent, or a person in parental authority, in or through the child's home. (Texas Education Code §29.916)

(32) Honorably Retired Peace Officer--An unappointed person with a Texas Peace Officer license who has a cumulative total of 15 years of full-time service as a Peace Officer. An Honorably Retired Peace Officer does not carry any Peace Officer authority.

(33) Individual--A human being who has been born and is or was alive.

(34) Jailer--A person employed or appointed as a jailer under the provisions of the Local Government Code, §85.005, or Texas Government Code §511.0092.

(35) Killed in the line of duty--A death that is the directly attributed result of a personal injury sustained in the line of duty.

(36) Law--Including, but not limited to, the constitution or a statute of this state, or the United States; a written opinion of a court of record; a municipal ordinance; an order of a county commissioners' court; or a rule authorized by and lawfully adopted under a statute.

(37) Law enforcement academy--A school operated by a governmental entity which may provide basic licensing courses and continuing education under contract with the commission.

(38) Law enforcement automobile for training--A vehicle equipped to meet the requirements of an authorized emergency vehicle as identified by Texas Transportation Code §546.003 and §547.702.

(39) Less lethal force weapon--A weapon designed or intended for use on individuals or groups of individuals which, in the course of expected or reasonably foreseen use, has a lower risk of causing death or serious injury than do firearms. Less-lethal force weapons do not include firearms or other weapons whose expected or reasonably foreseen use would result in life-threatening injuries. Less lethal force weapons may include police batons, hand-held chemical irritants, chemical irritants dispersed at a distance, conducted electrical weapons, kinetic impact projectiles, water cannons, and acoustic weapons and equipment. An officer provided or equipped with a less lethal force weapon should be trained, qualified, or certified in its use.

(40) Lesson plan--A plan of action consisting of a sequence of logically linked topics that together make positive learning experiences. Elements of a lesson plan include: measurable goals and objectives, content, a description of instructional methods, tests and activities, assessments and evaluations, and technologies utilized.

(41)[(40)] License--A license required by law or a state agency rule that must be obtained by an individual to engage in a particular business.

(42)[(41)] Licensee--An individual holding a license issued by the commission.

(43)[(42)] Line of duty--Any lawful and reasonable action, which an officer identified in Texas Government Code, Chapter 3105 is required or authorized by rule, condition of employment, or law to perform. The term includes an action by the individual at a social, ceremonial, athletic, or other function to which the individual is assigned by the individual's employer.

(44)[(43)] Moral character--The propensity on the part of a person to serve the public of the state in a fair, honest, and open manner.

(45)[(44)] Officer--A peace officer or reserve identified under the provisions of the Texas Occupations Code, §1701.001.

(46)[(45)] Patrol rifle--Any magazine-fed repeating rifle with iron/open sights or with a frame mounted optical enhancing sighting device, 5 power or less, that is carried by the individual officer in an official capacity.

(47) Patrol vehicle--A vehicle equipped with emergency lights, siren, and the means to safely detain and transport a combative detainee.

(48)[(46)] Peace officer--A person elected, employed, or appointed as a peace officer under the provisions of the Texas Occupations Code, §1701.001.

(49)[(47)] Personal Identification Number (PID)--A unique computer-generated number assigned to individuals for identification in the commission's electronic database.

(50)[(48)] Placed on probation--Has received an adjudicated or deferred adjudication probation for a criminal offense.

(51)[(49)] POST--State or federal agency with jurisdiction similar to that of the commission, such as a peace officer standards and training agency.

(52)[(50)] Precision rifle--Any rifle with a frame mounted optical sighting device greater than 5 power that is carried by the individual officer in an official capacity.

(53)[(51)] Proprietary training contractor--An approved training contractor who has a proprietary interest in the intellectual property delivered.

(54)[(52)] Public security officer--A person employed or appointed as an armed security officer identified under the provisions of the Texas Occupations Code, §1701.001.

(55)[(53)] Reactivate--To make a license issued by the commission active after a license becomes inactive. A license becomes inactive at the end of the most recent unit or cycle in which the licensee is not appointed and has failed to complete legislatively required training.

(56)[(54)] Reinstate--To make a license issued by the commission active after disciplinary action or failure to obtain required continuing education.

(57)[(55)] Reserve--A person appointed as a reserve law enforcement officer under the provisions of the Texas Occupations Code, §1701.001.

(58)[(56)] School marshal--A person employed and appointed by the board of trustees of a school district, the governing body of an open-enrollment charter school, the governing body of a private school, or the governing board of a public junior college under Texas Code of Criminal Procedure, Article 2.127 and in accordance with and having the rights provided by Texas Education Code, §37.0811.

(59)[(57)] Self-assessment--Completion of the commission created process, which gathers information about a training or education program.

(60)[(58)] Separation--An explanation of the circumstances under which the person resigned, retired, or was terminated, reported on the form currently prescribed by the commission, in accordance with Texas Occupations Code, §1701.452.

(61)[(59)] SOAH--The State Office of Administrative Hearings.

(62)[(60)] Successful completion--A minimum of:

(A) 70 percent or better; or

(B) C or better; or

(C) pass, if offered as pass/fail.

(63) Sustainable funding sources--Funding from an agency's governing body such as property tax, sales tax, use and franchise fees, and the issuance of traffic citations subject to section 542.402 of the Texas Transportation Code. Term limited sources, such as grants, are not sustainable funding sources.

~~(64)[(61)]~~ TCLEDDS--Texas Commission on Law Enforcement Data Distribution System.

~~(65)[(62)]~~ Telecommunicator--A person employed as a telecommunicator under the provisions of the Texas Occupations Code, §1701.001.

~~(66)[(63)]~~ Training coordinator--An individual, appointed by a commission-recognized training provider, who meets the requirements of §215.9 of this title.

~~(67)[(64)]~~ Training cycle--A 48-month period as established by the commission. Each training cycle is composed of two contiguous 24-month units.

~~(68)[(65)]~~ Training hours--Classroom or distance education hours reported in one-hour increments.

~~(69)[(66)]~~ Training program--An organized collection of various resources recognized by the commission for providing preparatory or continuing training. This program includes, but is not limited to, learning goals and objectives, academic activities and exercises, lesson plans, exams, skills training, skill assessments, instructional and learning tools, and training requirements.

~~(70)[(67)]~~ Training provider--A governmental body, law enforcement association, alternative delivery trainer, or proprietary entity credentialed by or authorized under a training provider contract with the commission to provide preparatory or continuing training for licensees or potential licensees.

(71) Uniform--Dress that makes an officer immediately identifiable as a peace officer, to include a visible badge. Acceptable uniform dress must be defined in agency policy and consistent in its application and use across the agency.

~~(72)[(68)]~~ Verification (verified)--The confirmation of the correctness, truth, or authenticity of a document, report, or information by sworn affidavit, oath, or deposition.

(b) The effective date of this section is June 1, 2024~~[February 1, 2020]~~.

§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~~[On or after September 1, 2009, an entity authorized by statute or by the constitution to create a law enforcement agency or police department and commission, appoint, or employ peace officers that first creates a law enforcement agency or police department and first begins to commission, appoint, or employ peace officers shall make application to the commission.~~

~~(b) On creation of the law enforcement agency or police department, and as part of the application process, the entity shall submit to the commission the application form, any associated application fee, and information regarding]:~~

~~(1) provides public benefit to the community~~~~[the need for the law enforcement agency or police department in the community];~~

~~(2) has sustainable~~~~[the] funding sources that meet or exceed the continued operating expenses outlined in a line-item budget for the~~ ~~[law enforcement]~~ ~~agency~~ ~~[-or police department];~~

~~(3) has~~~~[the] physical resources available to officers, including:~~

~~(A) at least one firearm per officer on duty, provided by either the officer or the agency;~~

~~(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 the agency; and

(G) patrol vehicles owned, insured, and equipped by the agency and provided to officers whose duties include any of the following:

(i) performing patrol;

(ii) traffic enforcement; or

(iii) responding to calls for service;

(4) has~~[the]~~ physical facilities, including:~~[that the law enforcement agency or police department will operate, including descriptions of the evidence room, dispatch area, and public area]~~

(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~~[law enforcement]~~ policies~~[-of the law enforcement agency or police department]~~, 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;~~and~~
- (H) medical and psychological examination of licensees;~~[fitness for duty.]~~
- (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~~[the]~~ administrative structure, including;~~[-of the law enforcement agency or police department]~~

(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 its vehicles;~~and~~

(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 documenting their continued compliance with the requirements of this rule. An agency that does not complete a report by March 1st of any year will be placed in an inactive status until the report is completed. An agency that is inactive for five continuous years may only resume operation after reapplying as a new agency.

(g) The effective date of this section is June 1, 2024~~[February 1, 2016]~~.