

PROPOSED RULES AMENDMENT PREAMBLE

Brief explanation of proposed rule amendment

The Texas Higher Education Coordinating Board proposes amendments to Chapter 7, Subchapter A, Sections 7.3 and 7.14 of Board rules concerning Degree Granting Colleges and Universities Other Than Texas Public Institutions.

The intent of the amendment to Section 7.3 is to define the meaning of a reciprocal state exemption agreement as it relates to out-of-state postsecondary institutions wanting to offer distance education in Texas. The new definition will provide a clearer understanding for out-of-state institutions to which Chapter 7 rules apply.

Staff also proposes an amendment to Section 7.14 by amending Section 7.14 (1) to include an exemption based upon participation in a reciprocal state exemption agreement. The intent of the new section is to clarify the process by which out-of-state institutions receive approval for offering distance education in Texas. This amendment allows for The Coordinating Board to enter into reciprocal state exemption agreements that could benefit Texas public institutions of higher education by exempting them from the oversight of other state higher education agencies for the purpose of distance education.

Fiscal note and estimated cost to state and local government (or estimated reduction in costs to state and local government, and/or estimated loss of increase in revenue to state and local government)

MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the rule listed above.

Public benefit and local employment impact

Dr. Stephenson has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be to streamline the process by allowing certain exempt out-of-state institutions to receive permission to offer distance education to Texas students without extensive staff review and to improve staff efficiencies. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Request for comments

Comments on the proposed amendments may be submitted by mail to MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

Statutory basis for amendment

The amendments are proposed under the Texas Education Code, Chapter 61, Subchapters G and H, which provides the Coordinating Board with the authority to administer the laws regulating private and out-of-state public postsecondary institutions operating in Texas.

Statutes, articles, codes affected by the proposed action

The amendments affect the Texas Education Code, Chapter 61, Subchapters G and H.

Certification of Review By Legal Counsel

The Coordinating Board certifies that the proposed rules have been reviewed by legal counsel and found to be within the agency's authority to adopt.

CHAPTER 7, Degree Granting Colleges And Universities
Other Than Texas Public Institutions

SUBCHAPTER A, General Provisions

- 7.1 Purpose
- 7.2 Authority
- 7.3 Definitions
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- 7.5 Administrative Penalties and Injunctions
- 7.6 Recognition of Accrediting Agencies
- 7.7 Institutions Accredited by Board Recognized Accreditors
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- 7.9 Religious Institutions Offering Degrees in Religious Disciplines
- 7.10 Registration of Agents
- 7.11 Changes of Ownership and Other Substantive Changes
- 7.12 Review and Use of Degrees from Institutions Not Eligible for Certificates of Authority
- 7.13 Data Reporting
- 7.14 Distance Education Approval Processes for Degree Granting Colleges and Universities Other than Texas Public Institutions

7.1 -7.2 No changes.

7.3 Definitions

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

(1) - (33) No changes.

(34) Reciprocal State Exemption Agreement -- An agreement entered into by the Texas Higher Education Coordinating Board with an out-of-state state higher education agency or higher education system for the purpose of creating a reciprocal arrangement whereby that entity's institutions are exempted from THECB oversight for the purposes of distance education. In exchange, Texas institutions of higher education would be exempted from that state's oversight for the purposes of distance education.

(35) [34] Recognized Accrediting Agency--Any accrediting agency the standards of accreditation or membership for which have been found by the Board to be sufficiently comprehensive and rigorous to qualify its institutional members for an exemption from the operation of this chapter.

(36) [35] Representative--A person who acts on behalf of an institution regulated under this subchapter. The term includes, without limitation, recruiters, agents, tutors, counselors, business agents, instructors, and any other instructional or support personnel.

~~(37)~~ [36] Required State or National Licensure--The requirement for graduates of certain professional programs to obtain a license from state or national entities for entry-level practice.

~~(38)~~ [37] Substantive Change--Any change in principal location, ownership, or governance.

7.4 - 7.13 No changes.

7.14 Distance Education Approval Processes for Degree Granting Colleges and Universities Other Than Texas Public Institutions

An institution which does not meet the definition of institution of higher education contained in Texas Education Code §61.003 and wishes to offer distance education to students in Texas must follow the requirements in paragraphs (1) – (3) of this section. For the purposes of this section distance education shall mean education or training delivered off campus via educational technologies where the student(s) and the instructor(s) are separated by physical distance and/or time.

(1) Exempt Institutions

(A) An institution is exempt and does not need to receive permission from the Coordinating Board to offer distance education programs and courses to Texas students if it fulfills the following:

(i) Accredited to offer degrees at a specific level by an accrediting agency recognized by the Coordinating Board or approved by a Texas state agency which authorizes the school's graduates to take a professional or career and technical state licensing examination administered by that agency; and

(ii) No physical presence in the state as defined by Section 7.3 of this title.

~~(B) An institution is also exempt and does not need to receive permission from the Coordinating Board to offer distance education programs and courses to Texas students if it is covered by a reciprocal state exemption agreement.~~

~~(C) [(B)]~~ An institution's exemption applies only to the degree level for which the programs or institution is accredited.

~~(D) [(C)]~~ An institution's exemption continues as long as it is in compliance with subparagraphs (A), ~~and (B)~~, and (C) of this paragraph. If an institution is no longer accredited by an accreditor recognized by Texas and/or maintains a physical presence in Texas or if an institution is no longer covered by a reciprocal state exemption agreement, the institution is no longer eligible for an exemption and must receive Coordinating Board authority to offer distance education to Texas students.

(2) Nonexempt Institutions

(A) An institution is not exempt and must receive Coordinating Board permission to offer distance education programs and courses to Texas students if it fulfills any of the following:

(i) Is accredited to offer degrees at a specific level by an accrediting agency recognized by the Coordinating Board or approved by a Texas state agency which authorizes the school's graduates to take a professional or career technical state licensing examination administered by that agency and maintains a physical presence in Texas as defined by Section 7.3 of this title; or.

(ii) Is not accredited to offer degrees at a specific level by an accrediting agency recognized by the Coordinating Board nor approved by a Texas state agency which authorizes the school's graduates to take a professional or career technical state licensing examination administered by that agency.

(B) An institution that is accredited to offer degrees at a specific level by an accrediting agency recognized by the Coordinating Board or approved by a Texas state agency which authorizes the school's graduates to take a professional or career technical state licensing examination by that agency and maintains a physical presence in Texas as defined by Section 7.3 of this title must follow the guidelines established in Section 7.7 of this title (relating to Institutions Accredited by Board Recognized Accreditors).

(C) An institution that is not accredited to offer degrees at a specific level by an accrediting agency recognized by the Coordinating Board nor approved by a Texas state agency which authorizes the school's graduates to take a professional or career technical state licensing examination administered by that agency, whether or not it maintains a physical presence in Texas as defined by Section 7.3 of this title must follow the guidelines established in Section 7.8 of this title (relating to Institutions Not Accredited by a Board Recognized Accreditor).

(D) An institution that would like to offer a degree program or courses leading to a degree in a religious discipline via distance education is exempt from seeking Coordinating Board approval. A religious institution that would like to offer a degree program or courses leading to a degree in a non-religious discipline via distance education must follow the requirements outlined in subparagraph (B) or (C) of this paragraph.