

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. “(No change)” indicates that existing rule text at this level will not be amended.

TITLE 4. AGRICULTURE

PART 4. OFFICE OF THE STATE ENTOMOLOGIST

CHAPTER 71. BEES

The Texas Apiary Inspection Service (TAIS) proposes amendments to 4 TAC §§71.1, 71.11, 71.22, 71.23, 71.51, and 71.53 to modernize outdated information and provide further clarification on the operations of TAIS. TAIS also proposes the sections 4 TAC §§71.9, 71.10, and 71.12 be added to clarify the permit, inspection, and quarantine requirements provided in the Texas Agriculture Code, Chapter 131, Bees and Honey. TAIS proposes to repeal 4 TAC §71.7 due to the defunding of the certification program. TAIS also proposes to repeal 4 TAC §71.21 to reduce the restrictions and financial consequences set upon beekeepers who wish to request a queen apiary inspection. The need for these alterations reflect the changes within the apiary industry and TAIS over the past decade.

Comments on the proposal may be submitted in writing to Mary Reed, Chief Apiary Inspector, 2475 TAMU, College Station, Texas 77843-2475. Comments may also be submitted electronically to mary.reed@tamu.edu or faxed to (979) 845-0983.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §§7.1, 7.9, 7.10

The amendments, as well as the addition of §71.9 and §71.10, are proposed under the Texas Agriculture Code, §§131.021, which authorizes the Chief Apiary Inspector to adopt rules with the goal of treating, eradicating, and suppressing infectious diseases of honey bees.

The proposed amendments and new §71.9 and §71.10 implement the Texas Agriculture Code, §§131.001 - 131.122.

§71.1. Definitions.

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

- (1) Act--Texas Bee Law, Texas Agricultural Code, Chapter 131, (1981), as amended.
- (2) Apiary--A place where six or more colonies of bees or nuclei of bees are kept.
- (3) Bee--Any stage of the common honeybee, *Apis mellifera* species.
- (4) Chief Apiary Inspector--The Chief Apiary Inspector, formerly known as State Entomologist, appointed by the director or his designee.

(5) [(4)] Colony--The hive and its equipment and appurtenances, including bees, comb, honey, pollen, and brood.

(6) [(5)] Director--The director of Texas A&M AgriLife Research, formerly known as the Texas Agricultural Experiment Station.

(7) [(6)] Disease--American foulbrood, European foulbrood, or any other contagious or infectious disease of bees, or parasite or pest that affects bees or brood.

(8) [(7)] Equipment--Hives, supers, frames, veils, gloves, tools, machines, including bee removal vacuums, or other devices for the handling and manipulation of bees, honey, pollen, wax, or hives, including storage or transporting containers for pollen, honey, or wax, or other apiary supplies used in the operation of an apiary or honey house.

(9) [(8)] Governing board--The Board of Regents of the Texas A&M University System.

(10) [(9)] Honey--The nectar of plants that has been transferred by, and is the natural product of, bees and that is in the comb or has been taken from the comb and is packaged in a liquid, crystallized, or granular form.

(11) [(10)] Nucleus--A small mass of bees and combs used in forming a new colony.

(12) [(11)] Person--Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

(13) [(12)] Pollen--Dust-like grains formed in the anthers of flowering plants in which the male elements or sperm are produced.

(14) [(13)] Queen apiary--An apiary in which queen bees are reared or kept for sale, barter, or exchange.

[(14)] State entomologist--The state entomologist appointed by the director or the designee of the state entomologist.]

(15) Reportable Diseases--a disease that presents a significant threat to the population of honey bees and that has been designated by the Chief Apiary Inspector as a disease or pest that must be reported under §131.025 of the Act. The Chief Apiary Inspector shall publish a list of reportable diseases.

§71.9. Permits for Shipment.

(a) Permits authorizing exportation of bees or equipment from Texas to another state may be issued as provided in §131.042 of the Act. An affidavit provided under subsection (b)(2) of that section shall be filed with the office of the Chief Apiary Inspector and shall be valid only for a period of one year from the date of filing.

(b) Permits authorizing intrastate shipment of bees or equipment may be issued as provided in §131.043 of the Act.

§71.10. Inspection and Certification.

(a) Inspections may be requested at any point during the year. An inspection may be requested in accordance to §131.044(a) or via telephone at (979) 845-9713.

(b) Certificates of inspection are valid for one year from the inspection date.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 15, 2020.

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Lynda Cook

Assistant General Counsel

Office of the State Entomologist

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For further information, please call: (979) 845-9713



4 TAC §71.7

The repeal of §71.7 is proposed under the Texas Agriculture Code, §§131.021, which authorizes the Chief Apiary Inspector to adopt rules with the goal of treating, eradicating, and suppressing infectious diseases of honey bees.

The proposed repeal of §71.7 implements the Texas Agriculture Code, §§131.001 - 131.122.

§71.7. European Honey Bee Certification.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER B. DISEASE CONTROL

4 TAC §71.11, §71.12

The amendments, as well as the new §71.12, are proposed under the Texas Agriculture Code, §§131.021, which authorizes the Chief Apiary Inspector to adopt rules with the goal of treating, eradicating, and suppressing infectious diseases of honey bees.

The proposed amendments and addition of §71.12 implement the Texas Agriculture Code, §§131.001 - 131.122.

§71.11. Apiary Quarantine.

(a) All apiaries wherein a reportable disease is known to exist may be quarantined by the Chief Apiary Inspector [state entomologist].

(b) A quarantine of an apiary by the Chief Apiary Inspector [state entomologist] shall be established by:

(1) notifying the person having custody or control of the apiary of the presence of the reportable disease; or

(2) placing quarantine signs on the location quarantined.

(c) No bees, nuclei, combs, or equipment may be removed from a quarantined apiary except upon written authorization of the Chief Apiary Inspector [state entomologist].

(d) A quarantine established by the Chief Apiary Inspector [state entomologist] shall remain in force and effect until the Chief Apiary Inspector [state entomologist] shall declare the quarantined apiary or location to be free from disease. The Chief Apiary Inspector [state entomologist] shall review a quarantined apiary or location at least once every 30 days for the continued presence of disease.

§71.12. Area Quarantine.

If the Chief Apiary Inspector determines that the public welfare requires the establishment of a quarantine, the inspector may declare a protective quarantine of a district, county, precinct, or other defined area as provided in the §131.022 of the Act.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER C. PERMITS AND REGISTRATION

4 TAC §71.21

The repeal of §71.21 is proposed under the Texas Agriculture Code, §§131.021, which authorizes the Chief Apiary Inspector to adopt rules with the goal of treating, eradicating, and suppressing infectious diseases of honey bees.

The proposed repeal of §71.21 implements the Texas Agriculture Code, §§131.001 - 131.122.

§71.21. Inspection of Queen Apiary.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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4 TAC §71.22, §71.23

The amendments are proposed under the Texas Agriculture Code, §§131.021, which authorizes the Chief Apiary Inspector to adopt rules with the goal of treating, eradicating, and suppressing infectious diseases of honey bees.

The proposed amendments implement the Texas Agriculture Code, §§131.001 - 131.122.

§71.22. Payment of Fees.

(a) Payment of fees may be made electronically or by check or money order. All checks or money orders remitted for the payment of any fees specified in Subchapter C of the Act, shall be made payable to the "Texas Apiary Inspection Service." Fees shall be collected in the same manner that other fees of the Texas A&M AgriLife Research agency are collected.

(b) In the event of delinquent payment for such fees, the Chief Apiary Inspector [state entomologist] may:

- (1) sue to collect the delinquent fee;
- (2) revoke or rescind the permit or registration; and/or
- (3) require a \$10 penalty for delinquent payment from the registrant or permittee.

§71.23. Exemption from Fees.

A person [An individual] owning no more than 12 colonies of bees will be exempt from the \$25 intrastate permit fee provided for in the Act, §131.043 [131.043].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER D. QUARANTINES

4 TAC §71.51, §71.53

The amendments are proposed under the Texas Agriculture Code, §§131.021, which authorizes the Chief Apiary Inspector to adopt rules with the goal of treating, eradicating, and suppressing infectious diseases of honey bees.

The proposed amendments implement the Texas Agriculture Code, §§131.001 - 131.122.

§71.51. Complaints and Notification.

(a) Beekeepers or other persons with a knowledge of or a formal complaint concerning the disease status of an apiary or relating to apiary equipment may notify: the Chief Apiary Inspector, Entomology Department, 2475 TAMU, Texas A&M University, College Station, TX 77843-2475, (979) 845-9713, TAIS@TAMU.EDU[77843, (409) 845-9714].

(b) Complaints or notification should be submitted in writing and include the following information, to the extent it is known:

- (1) name of beekeeper, person, or firm;
- (2) address and phone number;
- (3) location or site where the problem or receipt of diseased bees was noted;
- (4) other information or evidence, as may be helpful to the Texas Apiary Inspection Service in identifying and resolving a complaint.

(c) Receipt of complaints will be acknowledged and the complainant periodically notified of progress and the final resolution. Firm(s) or person(s) designated or involved in the complaint may be notified, if it is in the best public interest in resolving the complaint.

§71.53. Public Testimony.

(a) Persons interested in commenting or reviewing action or activities of the Texas Apiary Inspection Service are requested to notify the Texas Apiary Inspection Service. Interested parties will be notified when meetings are scheduled or may request to meet with the Chief Apiary Inspector [chief apiary inspector].

(b) The Texas Apiary Inspection Service will notify the president of the Texas Beekeepers Association at least three working days prior to a public meeting. Other organizations interested in honey bees may contact the Texas Apiary Inspection Service in writing, requesting advance meeting notification.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Lynda Cook

Assistant General Counsel

Office of the State Entomologist

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 3. STATE BANK REGULATION

SUBCHAPTER B. GENERAL

7 TAC §3.37

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §3.37, concerning the calculation of annual assessment for banks. The proposed amendment will update the bank assessment calculation table incorporated into §3.37(a) and correct certain typographical errors in §3.37(b)(1).

Effective November 5, 2015, §3.37 was amended to adjust the manner in which assessments applicable to state banks are calculated, see the October 30, 2015, issue of the *Texas Register* (40 TexReg 7620). The annual assessment for a state bank is calculated as described in §3.37, based on the values in the incorporated bank assessment calculation table as such values

are annually adjusted for inflation. The incorporated assessment table therefore becomes obsolete after the first annual adjustment for inflation, although sufficient information is provided in the section to permit a user to calculate updated values for the table. Pursuant to §3.37(b)(2), each year the department is required to "calculate and prepare a revised table reflecting the inflation-adjusted values to be applied effective the following September 1, and ... provide each state bank with notice of and access to the revised table."

Although the section provides the public enough information to verify the department's calculation of inflationary adjustments to the marginal assessment factor and the base assessment amount for each assessable asset group in the table, the accumulation of sequential annual adjustments will eventually make such verification extraordinarily difficult. For that reason, §3.37(b)(2) further provides that "every four years, the department shall propose amendments to this section for the purpose of substituting a current revised table in subsection (a) of this section..." This proposal will replace the obsolete bank assessment calculation table in §3.37(a) with an updated table reflecting current assessment rates as of September 1, 2020.

In addition, the commission is proposing to amend §3.37(b)(1)(A) and §3.37(b)(1)(B) to correct certain typographical errors. "GDIPD" is an acronym that stands for "the Gross Domestic Product Implicit Price Deflator," the inflation index used for inflationary adjustments to the assessment table that is published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. Currently, these clauses erroneously refer to "GDIPD."

Kurt Purdom, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rule as amended is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Mr. Purdom has also determined that, for each year of the first five years the rule as proposed to be amended is in effect, the public benefit anticipated as a result of enforcing the rule is simplification of the calculation of currently applicable assessment factors through substitution of a more current bank assessment calculation table.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed. There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

Pursuant to Government Code §2001.0221, the department provides the following Government Growth Impact Statement for the proposed amendment. During the first five years that the rule as amended will be in effect, the rule will not create or eliminate a government program, require the creation of new employee positions or the elimination of existing employee positions, require an increase or decrease in future legislative appropriations to the department, require an increase or decrease in fees paid to the department, create a new regulation; expand, limit or repeal an existing regulation; increase or decrease the number of individuals subject to the rule's applicability, or positively or adversely affect this state's economy.

To be considered, comments on the proposed amendment must be submitted no later than 5:00 p.m. on November 30, 2020.

Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendment is proposed pursuant to Texas Finance Code (Finance Code) §31.003(a)(4) and §31.106, which authorize the commission to adopt rules necessary or reasonable to recover the cost of supervision and regulation by imposing and collecting ratable and equitable fees. As required by Finance Code §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive position of state banks with regard to national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development in this state.

Finance Code §31.106 is affected by the proposed amendment.

§3.37. Calculation of Annual Assessment for Banks.

(a) Bank assessment calculation table. The annual assessment for a state bank is calculated as described in this section and paid as provided by §3.36 of this title (relating to Annual Assessments and Specialty Examination Fees), based on the values in the following table, as such values may be periodically adjusted in the manner provided by Subsection (b) of this section. Certain terms used in this section and in the following table are defined in §3.36(b). The unadjusted values in the following table are effective until September 1, 2021 [2017]:

Figure: 7 TAC §3.37(a)
[Figure: 7 TAC §3.37(a)]

(b) (No change.)

(1) (No change.)

(A) each [~~Eaeh~~] marginal assessment factor listed in Step 3 of the table is increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD [~~GDIPD~~] factor, rounded to six decimal places;

(B) the base assessment amount listed in Step 4 for assessable asset group 1 is increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD [~~GDIPD~~] factor, rounded to whole dollars; and

(C) (No change.)

(2) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 16, 2020.

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Catherine Reyer

General Counsel

Finance Commission of Texas

Earliest possible date of adoption: November 29, 2020

For further information, please call: (512) 475-1301



PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 19. TRUST COMPANY LOANS
AND INVESTMENTS
SUBCHAPTER C. REAL ESTATE

7 TAC §19.51

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §19.51 of Title 7 of the Texas Administrative Code, concerning other real estate owned. The amended rule is proposed to reduce the scope of the rule with regard to mandatory appraisals of certain real estate assets owned by state trust companies and to extend various deadlines for those appraisals.

BACKGROUND AND PURPOSE

Section 19.51 regulates "other real estate owned" (OREO). Among other things, this rule limits the ability of trust companies to acquire OREO using their restricted capital, prevents trust companies from holding such OREO indefinitely, and requires trust companies to take steps to ensure that their books and records accurately reflect the reasonably fair market value of the OREO.

Instances of ownership of OREO by trust companies are currently rare. Presently trust companies are required to obtain formal appraisals of OREO within 60 days of acquisition unless the recorded book value of the OREO is less than \$250,000 without exception. Trust companies are required to perform formal, written evaluations of the true market value of all of their OREO assets at least once a year. In addition, for trust companies that record OREO assets on their books at values above a certain dollar threshold, a formal re-appraisal of that OREO is currently required every three years.

Under the current rule, while the department has authority to require additional OREO appraisals, it does not have authority to extend the initial 60-day appraisal deadline or the three-year OREO re-appraisal deadline.

The proposed amendments, if adopted, would extend the initial appraisal deadline from within 60 days of OREO acquisition to within 90 days and give the Texas Banking Commissioner (the commissioner) authority to extend all appraisal deadlines where appropriate. These changes would not adversely impact trust company safety or soundness—expanding the window for initial appraisals by 30 days would not materially reduce initial appraisal accuracy or otherwise negatively affect trust companies, and the commissioner would have full discretion to deny or conditionally grant extension requests as appropriate to protect safety and soundness.

The proposed amendments also reduce the scope of the OREO appraisal rule by raising the recorded book value threshold for OREO subject to the rule. Specifically, the proposed amendments, if adopted, would only require an initial appraisal, and then re-appraisal every three years, of OREO with recorded book values of more than \$500,000. This raises the existing threshold from \$250,000.

These proposed adjustments to the book-value threshold in the trust company OREO appraisal rule follow recent similar amendments by the commission to OREO appraisal rules for state banks and state savings banks, as published in the September 4, 2020, issue of the *Texas Register* (45 TexReg 6228).

These amendments in turn all follow similar amendments to similar federal rules regarding appraisals of real estate supporting commercial loans adopted jointly by the United States Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve (Board), and the Federal Deposit Insurance Corporation (FDIC) in recent years to their regulations at Title 12 of the Code of Federal Regulations, §§34.43, 225.63, and 323.3, respectively.

The \$250,000 threshold in the department's current OREO appraisal rule was adopted in 1998 based on these federal regulations regarding valuations of real estate-related assets. This threshold has not been modified since the rule was promulgated in 1998.

The federal banking agencies recently raised their threshold for requiring formal appraisals of the real estate involved in loan transactions. The department incorporates by reference the extensive analysis and discussion by the federal banking agencies in adopting the federal amendments, published in the Federal Register (Real Estate Appraisals, 84 Fed. Reg. 53,579 (October 8, 2019); Real Estate Appraisals, 83 Fed. Reg. 15,019 (April 9, 2018)).

As was aptly discussed by the federal banking agencies in adopting the federal amendments, real estate prices have risen significantly since the 1990s.

According to national data from the Federal Reserve Commercial Real Estate Price Index, a commercial property that sold for \$250,000 as of June 30, 1994 would be expected to sell for approximately \$760,000 as of December 2016, and the average price of that property during the low-point of the aftermath of the 2008 financial crisis in March 2010 was \$423,000. Data from the Standard & Poor's Case-Shiller Home Price Index and the Federal Housing Finance Agency show similar increases in the prices of residential properties during these time periods.

Taking the foregoing into consideration, the department concurs with the federal banking agencies in concluding that the dollar threshold last established in the 1990s for certain formal real estate appraisal requirements can be raised to the levels in the proposed amendments without resulting in substantially increased risks for trust companies. This would reduce appraisal expenses for trust companies.

Finally, the proposed amendments also clarify that the scope of the OREO appraisal rule is limited, and the rule only applies to OREO acquired by a trust company with restricted capital. The Texas Trust Company Act (Trust Company Act), subtitle F of the Texas Finance Code (Finance Code), provides that a trust company may only invest restricted capital in certain limited circumstances, including as permitted by the Trust Company Act or commission rule. Accordingly, the primary scope of the OREO appraisal rule is limited to OREO acquired with restricted capital.

The banking commissioner will continue to have express authority under the OREO appraisal rule to require an appraisal of any OREO held by a trust company if deemed necessary to address safety and soundness concerns.

Moreover, other safety-and-soundness regulations do exist for OREO acquired by trust companies with secondary capital. Under Finance Code, §184.003(e), a trust company may invest its secondary capital in real property subject to the exercise of prudent judgment and the general Trust Company Act requirements for prudential investment management. Commission rules also require trust companies to comply with regulatory accounting

principles in accounting for all OREO investments. See 7 TAC §19.51(j)(2).

SUMMARY OF CHANGES

As discussed above, the proposed amendments, if adopted, would extend the initial appraisal deadline to within 90 days of OREO acquisition and enable the commissioner to extend this deadline and the three-year re-appraisal deadline where appropriate.

The proposed amendments also reduce the scope of the OREO appraisal rule by raising the recorded book value threshold for OREO subject to the rule. Specifically, the proposed amendments, if adopted, would only require initial appraisals and three-year re-appraisals for OREO with recorded book values of more than \$500,000, raising the existing threshold amount from \$250,000.

The proposed amendments also clarify that the OREO appraisal rule only applies to OREO acquired by a trust company with restricted capital.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

W. Kurt Purdom, Deputy Banking Commissioner, has determined that for the first five-year period the proposed amended rule is in effect, there will be no foreseeable increases or reductions in costs or other fiscal implications to state or local government as a result of enforcing or administering the rule as amended.

Mr. Purdom has further determined that for the first five-year period the proposed amended rule is in effect, there will be no foreseeable loss in revenue for state or local government as a result of enforcing or administering the rule as amended.

PUBLIC BENEFITS/COSTS TO REGULATED PERSONS

Mr. Purdom has determined that for each of the first five years the proposed amended rule is in effect, the public benefit anticipated from the amendments to the rule will be reducing regulatory complexity and potential operating costs for trust companies, thereby potentially improving the financial condition of those trust companies, their returns to investors, and their ability to provide cost-effective financial services to customers.

More importantly, the proposed amendments will not risk the interests of the public by reducing the safety and soundness of trust companies--all trust companies must still have prudent OREO valuation policies in accordance with regulatory accounting principles, and the department will continue to have authority under these regulations to require additional appraisals of OREO as deemed necessary to address safety and soundness concerns.

Mr. Purdom has further determined that for the first five years the rule amendments are in effect, there are no costs anticipated for persons required to comply with the rule as amended. The proposed amendments can only reduce costs to trust companies by decreasing the number of mandatory OREO appraisals trust companies would need to conduct. Real estate appraisals are typically significantly more costly than the alternative option of evaluation in terms of actual expenses and personnel time, so reducing the mandatory appraisals a trust company must pay for could result in savings to the trust company. Further, trust companies are free to conduct an appraisal rather than an evaluation should the trust company determine that to be more cost-effective or otherwise prudent.

ONE-FOR-ONE RULE ANALYSIS

Pursuant to Finance Code, §16.002, the department is a self-directed and semi-independent agency and thus not subject to the requirements of Texas Government Code (Government Code), §2001.0045. Further, since the proposed amended rule will not increase costs upon any trust company or other regulated person, and is instead amended to reduce costs for compliance, the requirements of Government Code, §2001.0045 would be satisfied if applicable.

GOVERNMENT GROWTH IMPACT STATEMENT

For each of the first five years the proposed amendments are in effect, the department has determined the following: (1) the rule amendments do not create or eliminate a government program; (2) implementation of the rule amendments does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the rule amendments does not require an increase or decrease in future legislative appropriations to the agency; (4) the rule amendments do not require an increase or decrease in fees paid to the agency; (5) the rule amendments do not create any new regulations; (6) the rule amendments neither expand nor eliminate existing regulations, but do limit existing regulation; and (7) the rule amendments do not increase or decrease the number of individuals subject to the rule's applicability. The proposed rule if amended may positively affect this state's economy by increasing competitiveness and reducing operating costs for state trust companies.

FISCAL IMPACT ON SMALL AND MICRO-BUSINESSES, AND RURAL COMMUNITIES

Mr. Purdom has determined the rule, if amended, will not have an adverse economic effect on small or micro-businesses, or rural communities because there are no costs or other adverse economic effects to the trust companies who are required to comply with the rule. Because there is no adverse impact on micro-businesses or small businesses from the proposed amendments, the department asserts preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code, §2006.002, are not required.

Mr. Purdom has determined the proposed amendments, if adopted, may indirectly have a minimal adverse economic impact on small and micro-businesses that conduct real estate appraisals. The proposed amendments, if adopted, have the potential to reduce the number of real estate appraisals required by trust companies and thereby reduce demand for appraisals, some of which are conducted by small businesses or micro-businesses. However, Mr. Purdom, in accordance with guidelines established by the Office of the Attorney General as provided by Government Code, §2006.002(g), has determined that such potential adverse economic impact only concerns appraisal services not regulated by the department and thus is only indirectly related to the rule amendment, and does not require the additional analysis for a direct adverse economic effect contemplated by Government Code, §2006.002(c).

Further, Mr. Purdom finds that any such loss of business to appraisal firms that are small or micro-businesses from the proposed amendments would be unrelated to the business's status as a small or micro-business. Businesses other than a small- or micro-business performing appraisals will be similarly affected proportionate to the amount of work derived from appraisals performed for trust companies.

The department further asserts the public benefits of the proposed rule, as discussed above, outweigh any potential adverse impact on small or micro-businesses.

PUBLIC COMMENTS

To be considered, comments on the proposed amendment must be submitted no later than 5:00 p.m. on November 30, 2020. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

STATUTORY AUTHORITY

This proposal is made under the authority of Finance Code, §11.301, which authorizes the commission to adopt rules applicable to trust companies, and Finance Code, §31.003, which authorizes the commission to adopt rules necessary to preserve or protect the safety and soundness of trust companies.

This proposal affects the statutes administered and enforced by the department's commissioner with respect to trust companies, contained in Finance Code, Subtitle A. No other statute is affected by this proposal.

§19.51. *Other Real Estate Owned.*

(a) - (d) (No change.)

(e) Appraisal requirements. Paragraphs (1) - (3) of this subsection apply to OREO acquired with the restricted capital of the trust company.

(1) Subject to paragraph (2) of this subsection, when OREO is acquired, a trust company must substantiate the market value of the OREO by obtaining an appraisal within 90 [60] days of the date of acquisition, unless extended by the banking commissioner. An evaluation may be substituted for an appraisal if the recorded book value of the OREO is \$500,000 or less [less than \$250,000].

(2) An additional appraisal or evaluation is not required when a trust company acquires OREO if a valid appraisal or appropriate evaluation was made in connection with the real estate loan that financed the acquisition of the OREO and the appraisal or evaluation is less than one year old.

(3) An evaluation shall be made on all OREO at least once a year. An appraisal shall be made at least once every three years, unless extended by the banking commissioner, on OREO with a recorded book value in excess of \$500,000 [250,000].

(4) Notwithstanding another provision of this section, the banking commissioner may require an appraisal of OREO if the banking commissioner considers an appraisal necessary to address safety and soundness concerns.

(f) - (j) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Catherine Reyer

General Counsel

Texas Department of Banking

Earliest possible date of adoption: November 29, 2020

For further information, please call: (512) 475-1301

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

The Finance Commission of Texas (commission) proposes amendments to §84.201 (relating to Time Price Differential), §84.604 (relating to Transfer of License; New License Application on Transfer of Ownership), §84.611 (relating to Fees), §84.613 (relating to Denial, Suspension, or Revocation Based on Criminal History), §84.707 (relating to Files and Records Required (Retail Sellers Assigning Retail Installment Sales Contracts)), §84.708 (relating to Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts)), §84.709 (relating to Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts)), §84.802 (relating to Non-Standard Contract Filing Procedures), §84.803 (relating to Relationship with Federal Law), and §84.809 (relating to Permissible Changes) in 7 TAC, Chapter 84, Subchapter B, concerning Motor Vehicle Installment Sales.

The rules in 7 TAC Chapter 84 govern motor vehicle sales finance. In general, the purpose of the proposed rule changes to 7 TAC Chapter 84 is to implement changes resulting from the commission's review of the subchapter under Texas Government Code, §2001.039. The OCCC distributed an advance notice of the rule review, and received one informal comment in response. Notice of the review of 7 TAC Chapter 84 was published in July 31, 2020, issue of the *Texas Register* (45 TexReg 5365). The commission received no comments in response to the published notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received two informal precomments on the rule text draft. The OCCC appreciates the thoughtful input provided by stakeholders.

A proposed amendment to §84.201 would correct a typographical error in figure 7 TAC §84.201(d)(2)(B)(iii), which shows maximum effective rates of time price differential. Another proposed amendment at §84.201(d)(3)(E)(iii) would update a reference to the title of 7 TAC §84.809, as discussed later in this proposal.

Proposed amendments to §84.604 would clarify the responsibility of a transferor and transferee, in the event of a license transfer or a new application on transfer of ownership. The proposed language is based on the similar rule for regulated lenders at 7 TAC §83.303 (relating to Transfer of License; New License Application on Transfer of Ownership). A proposed amendment to subsections (e)(5)(B) would remove the phrase "joint and several" in referring to the responsibility accepted by the transferor and transferee, in order to use the more straightforward term "responsibility." As amended, the three paragraphs in §84.604(h) would apply to three distinct periods of time: (1) the period be-

fore the transferee begins conducting business (when the transferor is responsible), (2) the period after the transferee begins conducting business and before final approval of the application (when the transferor and transferee are each responsible), and (3) the period after final approval (when the transferee is responsible). The proposed amendments are intended to ensure that licensees are aware of their responsibilities.

A proposed amendment to §84.611(e)(3) would correct a typographical error in a citation that is intended to refer to Texas Finance Code, §348.514. The current rule refers incorrectly to Texas Finance Code, §348.415, a section that does not exist.

Proposed amendments to §84.613 relate to the OCCC's review of the criminal history of a motor vehicle sales finance applicant or licensee. The OCCC is authorized to review criminal history of applicants and licensees under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.109; and Texas Government Code, §411.095. The proposed amendments to §84.613 would ensure consistency with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included the following changes in Texas Occupations Code, Chapter 53: (1) the bill repealed a provision that generally allowed denial, suspension, or revocation for any offense occurring in the five years preceding the application, (2) the bill added provisions requiring an agency to consider correlation between elements of a crime and the duties and responsibilities of the licensed occupation, as well as compliance with conditions of community supervision, parole, or mandatory supervision, and (3) the bill removed previous language specifying who could provide a letter of recommendation on behalf of an applicant. Proposed amendments throughout subsections (c) and (f) of §84.613 would implement these statutory changes from HB 1342. Other proposed amendments to §84.613 include technical corrections, clarifying changes, and updates to citations.

Proposed amendments to §84.707 deal with recordkeeping requirements for retail sellers that assign retail installment contracts. Proposed amendments to subsections (b) and (d)(2)(Q) would explain that a retail seller must maintain any conditional delivery agreement signed by a buyer or provided to the buyer. These amendments are intended to ensure that retail sellers maintain documentation to show their compliance with Texas Finance Code, Chapter 348, including Texas Finance Code, §348.013, which governs conditional delivery agreements. Other proposed changes to §84.707 would correct lettering and internal references.

Proposed amendments to §84.708 deal with recordkeeping requirements for retail sellers that collect installments on retail installment contracts. Proposed amendments to subsections (b) and (e)(2)(V) would explain that a retail seller must maintain any conditional delivery agreement signed by a buyer or provided to the buyer. These amendments are intended to ensure that retail sellers maintain documentation to show their compliance with Texas Finance Code, Chapter 348, including Texas Finance Code, §348.013, which governs conditional delivery agreements. A proposed amendment to subsection (e)(7) would explain that the register or report of debt cancellation agreements must include an indication of whether the agreement was satisfied or denied. This amendment is intended to ensure that retail sellers maintain documentation to show their compliance with Texas Finance Code, Chapter 354, governing debt cancellation agreements, and to enable OCCC examiners to review compliance. Other proposed changes to §84.708 would correct lettering and internal references.

Proposed amendments to §84.709 deal with recordkeeping requirements for holders that take assignment of retail installment contracts. A proposed amendment to subsection (e)(7) would explain that the register or report of debt cancellation agreements must include an indication of whether the agreement was satisfied or denied. This amendment is intended to ensure that holders maintain documentation to show their compliance with Texas Finance Code, Chapter 354, governing debt cancellation agreements, and to enable OCCC examiners to review compliance. Other proposed changes to §84.709 would correct lettering and internal references.

Proposed amendments to §84.802 provide clarity on the process for submitting a non-standard plain language contract for a motor vehicle retail installment transaction. These amendments specify that the contract must be submitted in accordance with the OCCC's instructions, and that PDF submissions must be text-searchable, must meet a size requirement, and may not be locked in a manner that prohibits comparison of different version of the contracts. These amendments are intended to enable OCCC staff to efficiently and effectively review non-standard plain language contract submissions. If a PDF submission is not text-searchable (e.g., scanned paper contract or image-only PDF), or if the PDF has security restrictions that prohibit comparison, this prevents OCCC staff from efficiently and effectively reviewing contracts.

Proposed amendments to §84.803 deal with the relationship between federal law and the rules governing submission of plain language contracts. The proposed amendments would remove current subsection (c), which provides that the term "time price differential" may be substituted for the term "finance charge" as used in the rules' model disclosures, except in those instances where use of that term would be prohibited by controlling federal law, regulation, or interpretation. In an informal comment to the advance rule review notice, one stakeholder commented that this provision was confusing, based on how the terms "time price differential" and "finance charge" are used elsewhere in Chapter 84. After reviewing the informal comment and the relevant provisions, the commission believes that current subsection (c) is unnecessary, and may lead to confusion by stakeholders because it does not describe any circumstances under which federal Regulation Z, 12 C.F.R. parts 226 and 1026, would allow a creditor to replace the term "finance charge." Proposed amendments to current subsections (d) and (e) would clarify a licensee's authority to replace "principal balance" with "amount financed" in certain situations, and to replace "contract rate" with "annual percentage rate" in certain situations.

A proposed amendment to §84.809 would add the phrase "Model Contract" to the rule title. This rule includes a model plain language contract as an attached figure. The amendment to the rule title will help readers locate the model contract.

Mirand Diamond, Director of Licensing and Registration, has determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, will be consistent with legislation recently passed by the legislature, will better protect consumers, will better enable

licensees to comply with Chapter 348 of the Texas Finance Code, and will ensure that licensees maintain records to show compliance with Chapter 348.

The OCCC does not anticipate economic costs to persons who are required to comply with the rule changes as proposed.

The OCCC is not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the OCCC invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, and rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the OCCC. The proposal would not create a new regulation. The proposal would expand current §84.707, §84.708, and §84.709 to specify records that licensees must maintain relating to conditional delivery agreements and debt cancellation agreements. The proposal would limit current §84.613 by amending grounds on which the OCCC may deny, suspend, or revoke a license on grounds of criminal history, and would limit current §84.803 to remove a reference to replacing the term "finance charge." The proposal would not repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

7 TAC §84.201

The rule changes are proposed under Texas Finance Code, §348.513, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 348, and under Texas Finance Code §353.513, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 353. The rule changes to §84.802, §84.803, and §84.809 are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts for retail installment transactions under Chapter 348.

In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 341, 348, and 353.

§84.201. *Time Price Differential.*

(a) - (c) (No change.)

(d) Method of calculation.

(1) (No change.)

(2) Scheduled installment earnings method. The scheduled installment earnings method can be used for both regular and irregular payment contracts.

(A) (No change.)

(B) Maximum annualized daily rate.

(i) - (ii) (No change.)

(iii) Effective rate. The maximum annualized daily rate cannot exceed the effective rate contained in Figure: 7 TAC §84.201(d)(2)(B)(iii) for the equivalent monthly period and appropriate add-on rate per \$100 determined by the model year designated by the manufacturer of the vehicle. The effective rates contained in Figure: 7 TAC §84.201(d)(2)(B)(iii) are the current maximum annualized daily rate authorized by Texas Finance Code, §348.104 or the alternative simple time price differential rate authorized by Texas Finance Code, §348.105. The alternative simple time price differential rate authorized by Texas Finance Code, §348.105 displayed as an example in Figure: 7 TAC §84.201(d)(2)(B)(iii) is 18% per annum. If the alternative simple time price differential rate is adjusted according to Texas Finance Code, Chapter 303 and is greater than effective rate contained in Figure: 7 TAC §84.201(d)(2)(B)(iii), the published rate will be highest effective rate.

Figure: 7 TAC §84.201(d)(2)(B)(iii)

(iv) (No change.)

(C) - (D) (No change.)

(3) True daily earnings method. The true daily earnings method can be used for both regular and irregular payment contracts.

(A) - (D) (No change.)

(E) Application of payments.

(i) - (ii) (No change.)

(iii) Use of model provision sufficient. While the retail installment contract is not required to use the model provision, use of the model provision found in 7 TAC §84.808(21) (relating to Model Clauses), or a variation of it as allowed under that section or 7 TAC §84.809 (relating to Model Contract; Permissible Changes), is deemed to sufficiently prescribe the method of application of payment.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 16, 2020.

TRD-202004331

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SUBCHAPTER F. LICENSING

7 TAC §§84.604, 84.611, 94.613

The rule changes are proposed under Texas Finance Code, §348.513, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 348, and under Texas Finance Code §353.513, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 353. The rule changes to §84.802, §84.803, and §84.809 are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts for retail installment transactions under Chapter 348. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 341, 348, and 353.

§84.604. *Transfer of License; New License Application on Transfer of Ownership.*

(a) - (c) (No change.)

(d) Timing. No later than 30 days after the event of a transfer of ownership, the transferee must file a complete license transfer application or new license application on transfer of ownership in accordance with subsection (e) of this section. A transferee may file an application before this date.

(e) Application requirements.

(1) - (4) (No change.)

(5) Request for permission to operate. The application may include a request for permission to operate. The request must be in writing and signed by the transferor and transferee. The request must include all of the following:

(A) a statement by the transferor granting authority to the transferee to operate under the transferor's license while final approval of the application is pending;

(B) an acknowledgement that the transferor and transferee each accept [joint and several] responsibility to any consumer and to the OCCC for any acts performed under the license while the permission to operate is in effect; and

(C) if the application is a new license application on transfer of ownership, an acknowledgement that the transferor will immediately surrender or inactivate its license if the OCCC approves the application.

(f) Permission to operate. If the application described by subsection (e) of this section includes a request for permission to operate and all required information, and the transferee has paid all fees required for the application, then the OCCC may issue a permission to operate to the transferee. A request for permission to operate may be denied even if the application contains all of the required information. The denial of a request for permission to operate does not create a right to a hearing. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license. Two companies

may not simultaneously operate under a single license. A permission to operate terminates if the OCCC denies an application described by subsection (e) of this section.

(g) Transferee's authority to engage in business. If a transferee has filed a complete application including a request for permission to operate as described by subsection (e) of this section, by the deadline described by subsection (d) of this section, then the transferee may engage in business under Texas Finance Code, Chapter 348 or 353, as applicable. However, the transferee must immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. If the OCCC denies the application, then the transferee has a right to a hearing on the denial, as provided by §84.608(d) of this title (relating to Processing of Application).

(h) Responsibility.

(1) Responsibility of transferor. Before the transferee begins performing motor vehicle sales finance activity under a license [OCCC's final approval of an application described by subsection (e)], the transferor is responsible to any consumer and to the OCCC for all motor vehicle sales finance activity performed under the license.

(2) Responsibility of transferor and transferee. If a transferee begins performing motor vehicle sales finance activity under a license before the OCCC's final approval of an application described by subsection (e) of this section, then the transferor and transferee are each responsible to any consumer and to the OCCC for activity performed under the license during this period.

(3) [(2)] Responsibility of transferee. After the OCCC's final approval of an application described by subsection (e) of this section [a transferee begins performing motor vehicle sales finance activity under a license], the transferee is responsible to any consumer and to the OCCC for all motor vehicle sales finance activity performed under the license. The [In addition, a] transferee is responsible for any transactions that it purchases from the transferor. In addition, if the transferee receives a license transfer, then the transferee's responsibility includes all activity performed under the license before the license transfer.

[(3) Joint and several responsibility. If a transferee begins performing motor vehicle sales finance activity under a license before the OCCC's final approval of an application described by subsection (e) (including activity performed under a permission to operate), then the transferor and transferee are jointly and severally responsible to any consumer and to the OCCC. This responsibility applies to any acts performed under the license after the transferee begins performing motor vehicle sales finance activity and before the OCCC's final approval of the license transfer.]

§84.611. *Fees*

(a) New licenses.

(1) Investigation fees. A \$200 nonrefundable investigation fee is assessed each time an application for a new license is filed.

(2) Registered office fees. The fee for each registered office is \$25.

(b) License transfers. An applicant must pay a nonrefundable investigation fee of \$200 for the transfer of a license.

(c) Fingerprint processing. An applicant must pay a fee to a party designated by the Texas Department of Public Safety for processing fingerprints. The Texas Department of Public Safety and the designated party determine the amount of the fee and whether it is refundable.

(d) License amendments.

(1) License amendment fees. A fee of \$25 must be paid each time a licensee amends a license by inactivating a license, activating an inactive license, changing the assumed name of the licensee, changing the organizational form or proportionate ownership, providing notification of a new parent entity, or relocating a licensed location.

(2) Registered office amendment fees. The fee for amending or relocating a registered office is \$10.

(e) Annual renewal and assessment fees.

(1) An annual assessment fee is required for each licensee consisting of:

(A) a licensed location fee not to exceed \$460;

(B) a registered office fee not to exceed \$430 per location; and

(C) if necessary, a variable fee based upon the annual dollar volume of retail installment sales contracts originated, acquired, or serviced during the preceding calendar year, as stated in the annual renewal statement described by paragraph (3) of this subsection.

(2) The maximum annual assessment for each active license will be no more than \$1,200 excluding the registered office fees.

(3) A licensee must file an annual renewal statement in connection with the license renewal. The licensee must provide the statement in a format prescribed by the OCCC and in accordance with the OCCC's instructions. The statement must include the annual dollar volume and number of retail installment sales contracts originated, acquired, or serviced during the preceding calendar year, calculated in accordance with the OCCC's instructions, and any other information required under the OCCC's instructions. The annual renewal statement is collected under the OCCC's examination authority, as provided by Texas Finance Code, §348.514 [§348.415]. A licensee's annual renewal statement relates to the examination process and is confidential under Texas Finance Code, §14.2015(a) and §348.514(d). However, the OCCC may publish aggregated reports based on the annual renewal statements that it collects.

(f) Licensed location or registered office duplicate certificates sent by mail. The fee for a duplicate certificate sent by mail is \$10.

(g) Costs of hearings. The commissioner may assess the costs of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §84.608 of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter, and agency staff representing the OCCC at a hearing.

§84.613. *Denial, Suspension, or Revocation Based on Criminal History.*

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §84.611 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and its principal parties;

(2) reliable documents or testimony necessary to make a determination under subsection (c) of this section, including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid or are current.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 348 or 353, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating, acquiring, or servicing retail installment sales contracts under Texas Finance Code, Chapter 348 or 353, involves or may involve making representations to consumers regarding the terms of the contract, receiving money from consumers, remitting money to third parties, maintaining accounts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, and collecting due amounts in a legal manner. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

(C) any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);

(D) any offense that involves breach of trust or other fiduciary duty;

(E) any criminal violation of a statute governing credit transactions or debt collection;

(F) failure to file a government report, filing a false government report, or tampering with a government record;

(G) any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense;

(H) any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; ~~and~~

(F) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(G) ~~(F)~~ evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation, ~~from one or more of the following:~~

~~(i) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;~~

~~(ii) the sheriff or chief of police in the community where the person resides; and~~

~~(iii) other persons in contact with the convicted person.~~

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §348.504(a) and §353.504(a). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or ~~(f)(1)~~ ~~[(f)(2)]~~ of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) - (3) of this section in its review of character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license,

based on any other ground authorized by statute, including the following:

~~[(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);]~~

~~(1) [(2)] a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054 [42.12, §3g], or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(2) - (3) [§53.021(a)(3) - (4)];~~

~~(2) [(3)] errors or incomplete information in the license application;~~

~~(3) [(4)] a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §348.508(3) and §353.508(3); and~~

~~(4) [(5)] any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §§348.504(a), 348.508, 353.504(a), and 353.508.~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 16, 2020.

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Matthew Nance

Deputy General Counsel

Office of Consumer Credit Commissioner

Earliest possible date of adoption: November 29, 2020

For further information, please call: (512) 936-7660



SUBCHAPTER G. EXAMINATIONS

7 TAC §§84.707 - 84.709

The rule changes are proposed under Texas Finance Code, §348.513, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 348, and under Texas Finance Code §353.513, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 353. The rule changes to §84.802, §84.803, and §84.809 are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts for retail installment transactions under Chapter 348. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 341, 348, and 353.

§84.707. *Files and Records Required (Retail Sellers Assigning Retail Installment Sales Contracts)*

(a) (No change.)

(b) Records required for each retail installment sales transaction. Each licensee must maintain records with respect to the licensee's compliance with Texas Finance Code, Chapter 348 for each motor vehicle retail installment sales contract made, acquired, serviced, or held

under Chapter 348 and make those records available for examination. This requirement includes any conditional delivery agreement or retail installment sales contract signed by a retail buyer for a vehicle that has been delivered, including contracts that are subsequently voided or canceled after a seller regains possession and ownership of the vehicle.

- (c) (No change.)
- (d) Records required.
 - (1) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) for all retail installment sales transactions:

(i) the retail installment sales contract signed by the retail buyer and the retail seller as required by Texas Finance Code, §348.101;

(ii) if prepared by the retail seller, the purchase or buyer's order reflecting a written computation of the cash price of the vehicle and itemized charges, a description of the motor vehicle being purchased, and a description of each motor vehicle being traded in;

(iii) the credit application and any other written or recorded information used in evaluating the application;

(iv) the Texas Department of Motor Vehicles' Title Application Receipt (Form VTR-500-RTS), Tax Assessor's Tax Collector's Receipt for Title Application/Registration/Motor Vehicle Tax handwritten receipt (Form 31-RTS), or similar document evidencing the disbursement of the sales tax, and fees for license, title, and registration of the vehicle;

(v) copies of other agreements or disclosures signed by the retail buyer applicable to the retail installment sales transaction; and

(vi) any records applicable to the retail installment transaction outlined by subparagraphs (B) - (Q) [~~(B)~~ - (~~L~~)] of this paragraph.

(B) - (P) (No change.)

(Q) any conditional delivery agreement signed by the retail buyer or provided to the retail buyer.

(3) - (7) (No change.)

§84.708. *Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts)*

(a) (No change.)

(b) Records required for each retail installment sales transaction. Each licensee must maintain records with respect to the licensee's compliance with Texas Finance Code, Chapter 348 for each motor vehicle retail installment sales contract made, acquired, serviced, or held

under Chapter 348 and make those records available for examination. This requirement includes any conditional delivery agreement or retail installment sales contract signed by a retail buyer for a vehicle that has been delivered, including contracts that are subsequently voided or canceled after a seller regains possession and ownership of the vehicle.

- (c) - (d) (No change.)
- (e) Records required.
 - (1) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) for all retail installment sales transactions:

(i) the retail installment sales contract signed by the retail buyer and the retail seller as required by Texas Finance Code, §348.101;

(ii) if prepared by the retail seller, the purchase or buyer's order reflecting a written computation of the cash price of the vehicle and itemized charges, a description of the motor vehicle being purchased, and a description of each motor vehicle being traded in;

(iii) the credit application and any other written or recorded information used in evaluating the application;

(iv) the original certificate of title to the vehicle, a certified copy of the negotiable certificate of title, or a copy of the front and back of either the original or certified copy of the title;

(v) the Texas Department of Motor Vehicles' Title Application Receipt (Form VTR-500-RTS), Tax Assessor's Tax Collector's Receipt for Title Application/Registration/Motor Vehicle Tax handwritten receipt (Form 31-RTS), or similar document evidencing the disbursement of the sales tax, and fees for license, title, and registration of the vehicle;

(vi) copies of other agreements or disclosures signed by the retail buyer applicable to the retail installment sales transaction; and

(vii) any records applicable to the retail installment transaction outlined by subparagraphs (B) - (V) [~~(B)~~ - (~~Q~~)] of this paragraph.

(B) - (U) (No change.)

(V) any conditional delivery agreement signed by the retail buyer or provided to the retail buyer.

(3) - (6) (No change.)

(7) Debt cancellation agreement for total loss or theft loss records. Each licensee who cancels entire balances or who cancels only partial balances under debt cancellation agreements must maintain a register or be able to generate a report, paper or electronic, that reflects

agreements that were either satisfied or denied. This register or report must show the name of the retail buyer, the account number, an indication of whether the agreement was satisfied or denied (e.g., "paid," "denied"), and the date of satisfaction or denial.

(8) - (10) (No change.)

(f) (No change.)

§84.709. *Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts)*

(a) - (d) (No change.)

(e) Records required.

(1) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) for all retail installment sales transactions:

(i) the retail installment sales contract signed by the retail buyer and the retail seller as required by Texas Finance Code, §348.101;

(ii) the credit application and any other written or recorded information used in evaluating the application;

(iii) the original certificate of title to the vehicle, a certified copy of the negotiable certificate of title, or a copy of the front of either the original or certified copy of the title; and

(iv) any records applicable to the retail installment transaction outlined by subparagraphs (B) - (J) [~~(B)~~ - (~~H~~)] of this paragraph.

(B) - (J) (No change.)

(3) - (6) (No change.)

(7) Debt cancellation agreement for total loss or theft loss records. Each licensee who cancels entire balances or who cancels only partial balances under debt cancellation agreements must maintain a register or be able to generate a report, paper or electronic, that reflects agreements that were either satisfied or denied. This register or report must show the name of the retail buyer, the account number, an indication of whether the agreement was satisfied or denied (e.g., "paid," "denied"), and the date of satisfaction or denial.

(8) - (9) (No change.)

(f) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Matthew Nance

Deputy General Counsel

Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7660



SUBCHAPTER H. RETAIL INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §§84.802, 84.803, 84.809

The rule changes are proposed under Texas Finance Code, §348.513, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 348, and under Texas Finance Code §353.513, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 353. The rule changes to §84.802, §84.803, and §84.809 are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts for retail installment transactions under Chapter 348. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 341, 348, and 353.

§84.802. *Non-Standard Contract Filing Procedures.*

(a) Non-standard contracts. A non-standard contract is a contract that does not use the model contract provisions. Non-standard contracts submitted in compliance with the provisions of Texas Finance Code, §341.502(c) will be reviewed to determine that the contract is written in plain language.

(b) Certification of readability. Contract filings subject to this chapter must be accompanied by a certification signed by an officer of the creditor or the entity submitting the form on behalf of the creditor. The certification must state that the contract is written in plain language and that the contract can be easily understood by the average consumer. The certification must state that the contract is printed in an easily readable font and type size, including a list of the typefaces used in the contract, the font sizes used in the contract, and the Flesch-Kincaid Grade Level score of the contract. The OCCC will prescribe the form of the certification.

(c) Filing requirements. Contract filings must be identified as to the transaction type. Contract filings must be submitted in accordance with the OCCC's instructions and the following requirements:

(1) Microsoft Word format. One copy must be submitted in a Microsoft Word format with the document having either a .doc or .docx extension. The Flesch-Kincaid Grade Level score of the contract must be based on the Microsoft Word readability statistics function for the Microsoft Word version of the contract.

(2) PDF format. One copy must be submitted in a text-searchable PDF format so that the contract may be visually reviewed in its entirety. The page size must be 8.5 inches by 11 inches or 8.5 inches by 14 inches. The PDF may not be locked or restricted in a way that prohibits comparison of different versions of the contract.

(3) No other formats permitted. The OCCC will not accept paper filings or any other unlisted formats for non-standard contract filings.

(4) Maximum Flesch-Kincaid score. The maximum Flesch-Kincaid Grade Level score for a Chapter 348 contact filing is grade 11.

(d) Contact person. One person must be designated as the contact person for each filing submitted. Each submission must provide the name, address, phone number, and if available, the email address and fax number of the contact person for that filing. If the contracts are submitted by anyone other than the company itself, the contracts must be accompanied by a dated letter which contains a description of the anticipated users of the contracts and designates the legal counsel or other designated contact person for that filing.

(e) Commercial vehicle. Pursuant to Texas Finance Code, §341.502(a), a motor vehicle retail installment sales contract involving a commercial vehicle does not have to be submitted in accordance with this section.

§84.803. *Relationship with Federal Law.*

(a) Applicability of federal law. The disclosure requirements of the Truth in Lending Act, 15 U.S.C. §§1601 - 1667f, and its implementing regulation, Regulation Z, 12 C.F.R. Parts 226 and 1026, and specifically 12 C.F.R. §226.18(f) and §1026.18(f), regarding variable rate disclosures, apply according to their terms to some retail installment transactions subject to this chapter.

(b) Inconsistency. In the event of any inconsistency or conflict between the disclosure or notice requirements in these provisions and any current or future federal law, regulation, or interpretation, the requirements of the federal law, regulation, or interpretation will control to the extent of the inconsistency.

~~{(c) The term "time price differential" may be substituted for the term "finance charge" as used in the model disclosures provided by this subchapter, except in those instances where use of that term would be prohibited by controlling federal law, regulation, or interpretation.}~~

(c) ~~[(d)]~~ Amount financed. In the model clauses provided by this subchapter, a licensee may replace the term "principal balance" with "amount financed" [~~The term "amount financed" may be substituted for "principal balance"~~] whenever the amount financed, computed in accordance with federal Regulation Z, is the same as the principal balance computed in accordance with the Texas Finance Code.

(d) ~~[(e)]~~ Annual percentage rate. In the model clauses provided by this subchapter, a licensee may replace the term "contract rate" with "annual percentage rate" [~~The term "annual percentage rate" may be substituted for "annual rate" or "contract rate"~~] whenever the annual percentage rate, computed in accordance with federal Regulation Z, is the same as the contract [~~annual~~] rate computed in accordance with the Texas Finance Code.

§84.809. *Model Contract; Permissible Changes.*

(a) - (d) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Matthew Nance

Deputy General Counsel

Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7660

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 21. EQUIPMENT AND VEHICLE SAFETY STANDARDS

37 TAC §21.7

The Texas Department of Public Safety (the department) proposes the repeal of §21.7, concerning Certification of Certain Vehicles. House Bill 3171 passed by the 86th Texas Legislature repealed §521.225 of the Texas Transportation Code which required the department to establish a procedure by rule for determining whether a vehicle was a moped and to compile a list of mopeds certified by the department. The repeal of §521.225 of the Texas Transportation Code has made §21.7 obsolete.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the repeal is in effect, the public benefit will be effective implementation of legislation.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions;

nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does repeal existing regulations. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed repeal is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Texas Department of Public Safety, Office of General Counsel, ATTN.: ML Calcote, P.O. Box 4087, MSC-0140, Austin, Texas 78773-0140. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §662.009, which authorizes the designated state agency to adopt rules to administer Chapter 662.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 662 are affected by this proposal.

§21.7. Certification of Certain Vehicles.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848

