ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 12. SWORN COMPLAINTS

SUBCHAPTER B. FILING AND INITIAL PROCESSING OF A COMPLAINT

1 TAC §12.53

The Texas Ethics Commission (the commission) adopts an amendment to Texas Ethics Commission Rule §12.53, regarding complaints initiated by the commission. The rule is adopted without changes to the proposed text as published in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1185) and will not be republished.

Section 12.53 relates to a preliminary review initiated by the commission. Chapter 571 of the Texas Government Code provides the commission's enforcement duties and requirements, which include certain confidentiality requirements provided by §571.140, Government Code, that apply to proceedings at a preliminary review hearing, a sworn complaint, and documents and any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint or motion. Additionally, §571.139(a) provides that the Public Information Act (Chapter 552) does not apply to documents or any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint or motion. Section 571.139(b) provides that the Open Meetings Act (Chapter 551) does not apply to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint or motion. Section 571.124(b), Government Code, provides that, on a motion adopted by an affirmative vote of at least six commission members, the commission, without a sworn complaint, may initiate a preliminary review of the matter that is the subject of the motion. Section 12.53 of the Commission Rules provides that a preliminary review initiated by the commission under §571.124(b) is deemed to be a complaint for purposes of all further proceedings under Chapter 571 of the Government Code and Chapter 12 of the Commission Rules.

It is clear from Subchapter E, Chapter 571, of the Government Code that the confidentiality provisions applicable to sworn complaints in §571.140 and the exemptions under §571.139 apply not only to a sworn complaint filed with the commission but also to a preliminary review initiated by the commission. Those provisions would also apply to documents and evidence relating to the processing of an initiated preliminary review. The amendment to §12.53 clarifies that those provisions apply to the gathering of information and discussions between the commission and commission staff that occur in contemplation of or in preparation for a commission-initiated preliminary review.

Public Comment

Mr. James E. "Trey" Trainor provided oral comments against the proposed amendment. Mr. Trainor objected that the commission does not have authority to exempt itself from Chapters 551 and 552. The commission disagreed with the comments. The rule provides clarification regarding the exemptions that the Texas Legislature adopted in §571.139 and §571.140 of the Texas Government Code. Those sections clearly encompass both a sworn complaint filed with the commission and a preliminary review initiated by the commission, as indicated, in part, by the use of the phrase "sworn complaint or motion" therein and the consistent references to such a motion throughout Subchapter E, Chapter 571, of the Texas Government Code. Given that the exceptions in §571.139 and §571.140 apply to documents and evidence related to the processing of an initiated preliminary review, and given the strict application of those exceptions throughout the enforcement process with the exception of a formal hearing, requiring the gathering of information and discussions between the commission and commission staff in contemplation of or in preparation for a commission-initiated preliminary review to be public and open would be an absurd result that the legislature could not have intended.

The amendment to §12.53 is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The amendment to §12.53 affects Chapter 571 of the Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2016.

TRD-201601732
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
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Proposal publication date: February 19, 2016
For further information, please call: (512) 463-5800

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CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER A. GENERAL RULES

1 TAC §20.3

The Texas Ethics Commission (the commission) adopts an amendment to Texas Ethics Commission Rule §20.3, regarding the requirements to file campaign finance reports with the commission. The rule is adopted without changes to the proposed text as published in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1186) and will not be republished.

Section 20.3 provides when the commission is the appropriate filing authority for campaign finance reports. Prior to the 2015 regular legislative session, §254.130, Texas Election Code, required all campaign finance reports and campaign treasurer appointments to be filed with the same filing authority, depending on the type of filer and the filer's purposes. Under that law, a specific-purpose committee (SPAC) that only supported or opposed a school bond measure had to file all reports with the school district. In the 2015 session, the Texas Legislature amended §254.130 to require an SPAC created to support or oppose a measure on the issuance of bonds by a school district to file its campaign finance reports with the commission. Thus, those SPACs must now file a campaign treasurer appointment with the school board and all campaign finance reports with the commission. The amendment to §20.3 is consistent with the statutory amendment to §254.130, Texas Election Code, to require an SPAC that supports or opposes a school bond measure to file campaign finance reports with the commission.

No comments were received regarding the proposed amendment.

The amendment to §20.3 is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The amendment to §20.3 affects §254.130 of the Election Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Natalia Luna Ashley
Executive Director
Texas Ethics Commission
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1 TAC §20.7

The Texas Ethics Commission (the commission) adopts an amendment to Texas Ethics Commission Rule §20.7, regarding the requirements to file campaign finance reports with a local filing authority. The rule is adopted without changes to the proposed text as published in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1186) and will not be republished.

Section 20.7 provides when the secretary of a political subdivision (or the presiding officer if the political subdivision has no secretary) is the appropriate filing authority for the filing of campaign finance reports. Prior to the 2015 regular legislative session, §254.130, Texas Election Code, required all campaign finance reports and campaign treasurer appointments to be filed with the same filing authority, depending on the type of filer and the filer's purposes. Under that law, a specific-purpose committee (SPAC) that only supported or opposed a school bond measure had to file all reports with the school district. In the 2015 session, the Texas Legislature amended §254.130 to require an SPAC created to support or oppose a measure on the issuance of bonds by a school district to file its campaign finance reports with the commission. Thus, those SPACs must now file a campaign treasurer appointment with the school board and all campaign finance reports with the commission. The amendment to §20.7 is consistent with the statutory amendment to §254.130, Texas Election Code, to require an SPAC that supports or opposes a school bond measure to file campaign finance reports with the commission. The amendment also provides that the campaign treasurer of such an SPAC should file with the commission a file-stamped copy of the campaign treasurer appointment that it files locally. The purpose of the rule is to encourage those SPACs to notify the commission of their filing status so that the commission can inform them of filing requirements and help ensure that reports are timely filed with the commission.

No comments were received regarding the proposed amendment.

The amendment to §20.7 is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The amendment to §20.7 affects §254.130 of the Election Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Natalia Luna Ashley
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SUBCHAPTER E. REPORTS BY A SPECIFIC-PURPOSE COMMITTEE

1 TAC §20.315

The Texas Ethics Commission (the commission) adopts an amendment to Texas Ethics Commission Rule §20.315, regarding the termination of a campaign treasurer appointment. The rule is adopted without changes to the proposed text as published in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1187) and will not be republished.

Section 20.315 provides the manner by which a campaign treasurer appointment for a specific-purpose committee (SPAC) is terminated. Prior to the 2015 regular legislative session, §254.130, Texas Election Code, required all campaign finance reports and campaign treasurer appointments to be filed with the same filing authority, depending on the type of filer and the filer's purposes. Under that law, an SPAC that only supported or opposed a school bond measure had to file all reports with the school district. In the 2015 session, the Texas Legislature amended the law to require an SPAC created to support or

oppose a measure on the issuance of bonds by a school district to file its campaign finance reports with the commission. Thus, those SPACs must now file a campaign treasurer appointment with the school board and all campaign finance reports with the commission. An SPAC may also terminate its campaign treasurer appointment by filing a campaign finance report designated as a "termination report." The amendment to §20.315 states that a school bond measure SPAC must file its dissolution report with the commission, and must file its campaign treasurer appointment with the secretary of the school board (or the presiding officer if the school board has no secretary). The amendment is consistent with the statutory amendment to §254.130, Texas Election Code.

No comments were received regarding the proposed amendment.

The amendment to §20.315 is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The amendment to §20.315 affects §254.130 of the Election Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Natalia Luna Ashley
Executive Director
Texas Ethics Commission
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CHAPTER 34. REGULATION OF LOBBYISTS

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §34.1

The Texas Ethics Commission (the commission) adopts an amendment to Texas Ethics Commission Rule §34.1(5), regarding the definition of "independent contractor." The rule is adopted without changes to the proposed text as published in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1188) and will not be republished.

Section 34.1(5) relates to the definition of "independent contractor" that previously was used in Chapter 305 of the Texas Government Code (state lobby law). Prior to the 2015 regular legislative session, independent contractors were permitted to receive a sales commission to lobby state agencies regarding purchasing decisions. In 2015, the Texas Legislature passed House Bill 3517, which amended §305.0041, Texas Government Code, to delete a provision that exempted from the lobby registration requirements an independent contractor who receives compensation to communicate regarding state agency purchasing decisions if the compensation is not contingent on the outcome of any administrative action. The bill also repealed §305.022(c-1) and (c-3), which provided that certain sales commissions payable to an independent contractor of a vendor of a product or service were not compensation contingent on the outcome of an administrative action. Section 305.022 now prohibits independent contractors from receiving those sales commissions. As a result, the rules that the commission adopted regarding sales commissions for independent contractors are obsolete, including §34.1(5).

No comments were received regarding the proposed amendment.

The amendment to §34.1, which deletes paragraph (5), is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The amendment to §34.1, which deletes paragraph (5), affects Chapter 305 of the Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Natalia Luna Ashley
Executive Director
Texas Ethics Commission
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For further information, please call: (512) 463-5800

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SUBCHAPTER B. REGISTRATION REQUIRED

1 TAC §34.46

The Texas Ethics Commission (the commission) adopts the repeal of Texas Ethics Commission Rule §34.46, regarding registration under §305.0041 of the Government Code. The repeal is adopted without changes to the proposed text as published in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1190). The repeal will be effective May 3, 2016.

Section 34.46 relates to registration of certain independent contractors as lobbyists. Prior to the 2015 regular legislative session, independent contractors were permitted to receive a sales commission to lobby state agencies regarding purchasing decisions. In 2015, the Texas Legislature passed House Bill 3517, which amended §305.0041, Texas Government Code, to delete a provision that exempted from the lobby registration requirements an independent contractor who receives compensation to communicate regarding state agency purchasing decisions if the compensation is not contingent on the outcome of any administrative action. The bill also repealed §305.022(c-1) and (c-3), which provided that certain sales commissions payable to an independent contractor of a vendor of a product or service were not compensation contingent on the outcome of an administrative action. Section 305.022 now prohibits independent contractors from receiving those sales commissions. As a result, the rules that the commission adopted regarding sales commissions for independent contractors are obsolete, including §34.46.

No comments were received regarding the proposed repeal.

The repeal of §34.46 is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The repeal of §34.46 affects Chapter 305 of the Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Natalia Luna Ashley
Executive Director
Texas Ethics Commission
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For further information, please call: (512) 463-5800

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SUBCHAPTER C. COMPLETING THE REGISTRATION FORM

1 TAC §34.73

The Texas Ethics Commission (the commission) adopts the repeal of Texas Ethics Commission Rule §34.73, regarding reporting by independent contractors under Chapter 305 of the Government Code. The repeal is adopted without changes to the proposed text as published in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1190). The repeal will be effective May 3, 2016.

Section 34.73 relates to reporting by certain independent contractors under Chapter 305 of the Texas Government Code (state lobby law). Prior to the 2015 regular legislative session, independent contractors were permitted to receive a sales commission to lobby state agencies regarding purchasing decisions. In 2015, the Texas Legislature passed House Bill 3517, which amended §305.0041, Texas Government Code, to delete a provision that exempted from the lobby registration requirements an independent contractor who receives compensation to communicate regarding state agency purchasing decisions if the compensation is not contingent on the outcome of any administrative action. The bill also repealed §305.022(c-1) and (c-3), which provided that certain sales commissions payable to an independent contractor of a vendor of a product or service were not compensation contingent on the outcome of an administrative action. Section 305.022 now prohibits independent contractors from receiving those sales commissions. As a result, the rules that the commission adopted regarding sales commissions for independent contractors are obsolete, including §34.73.

No comments were received regarding the proposed repeal.

The repeal of §34.73 is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The repeal of §34.73 affects Chapter 305 of the Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2016.

TRD-201601739
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
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Proposal publication date: February 19, 2016
For further information, please call: (512) 463-5800

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CHAPTER 46. DISCLOSURE OF INTERESTED PARTIES

1 TAC §46.3

The Texas Ethics Commission (the commission) adopts an amendment to Texas Ethics Commission Rule §46.3, relating to the disclosure of interested parties in certain contracts with a governmental entity or state agency. The rule is adopted without changes to the proposed text as published in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1191) and will not be republished.

House Bill 1295, adopted by the 84th Texas Legislature, created §2252.908, Texas Government Code. Section 2252.908 requires a business entity entering into certain contracts with a governmental entity or state agency to file with the governmental entity or state agency a disclosure of interested parties at the time the business entity submits the signed contract to the governmental entity or state agency. In relevant part, House Bill 1295 requires the commission to adopt rules necessary to implement the new disclosure requirement and to prescribe the disclosure form. Section 2252.908 provides definitions of certain terms occurring in the section. House Bill 1295 provides that §2252.908 applies only to a contract entered into on or after January 1, 2016.

In December 2015, the commission adopted rules (effective December 24, 2015) necessary to implement §2252.908, including rule §46.3 and additional rules in Chapter 46. Rule §46.3 defines several terms related to §2252.908, including the terms "controlling interest," "interested party," and "intermediary." The commission has also implemented an electronic filing application that must be used to file the disclosure form (Form 1295) required under §2252.908. Since the implementation of the Form 1295, the commission has received inquiries from persons about how the definitions in rule 46.3 apply and how to complete Form 1295. The amendment to Rule §46.3 clarifies that the definition of "interested party" applies in the same way that Form 1295 requires interested parties to be listed: as either having a controlling interest or as an intermediary (or both), as applicable.

The public benefit will be clarification in the commission's rules regarding the definition of "interested party" for purposes of Form 1295, Disclosure of Interested Parties.

Public Comment

The Securities Industry and Financial Markets Association ("SIFMA") submitted comments in support of the amendment. SIFMA stated that the amendment helps to clarify the disclosure requirements by removing repetitive yet conflicting language. SIFMA proposed expanding the term "intermediary" to clarify that employees of a firm's related business entities would not be included as it would be difficult to track across corporate lines. SIFMA also proposed further amendments to existing definitions and new definitions of terms related to House Bill 1295. The commission could not adopt the additional proposed

amendments, in part, because the amendments had not been published for adoption. Additionally, the commission voted to publish separate definitions of some of the terms at the April 8, 2016, meeting.

The amendment to §46.3 is adopted under Texas Government Code §2252.908(g), which requires and authorizes the commission to adopt rules necessary to implement §2252.908 of the Texas Government Code.

The amendment to §46.3 affects §2252.908 of the Texas Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2016.

TRD-201601705
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Effective date: May 2, 2016
Proposal publication date: February 19, 2016
For further information, please call: (512) 463-5800

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 352. MEDICAID AND CHILDREN'S HEALTH INSURANCE PROGRAM PROVIDER ENROLLMENT

1 TAC §§352.3, 352.7, 352.9, 352.21

The Texas Health and Human Service Commission (HHSC) adopts amendments to §352.3, concerning Definitions; §352.7, concerning Applying for Enrollment; §352.9, concerning Screening Levels; and §352.21, concerning Duty to Report Changes, without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1055) and will not be republished.

BACKGROUND AND JUSTIFICATION

The amended rules allow Medicaid providers to add a practice location to their Medicaid enrollment with a minimized administrative burden.

Providers enrolled in Texas Medicaid and Medicare historically have been able to submit new location information using Provider Information Change (PIC) forms alone; however, §352.7 required providers to submit a completed enrollment application for each practice location.

The use of PIC forms to add practice locations is allowable under federal and state law and in alignment with federal direction that state Medicaid programs can access the CMS enrollment system, or the Medicare Provider Enrollment, Chain, and Ownership System (PECOS), to verify provider location information. After implementation of the Affordable Care Act (ACA), CMS further encouraged use of PECOS by the states to determine whether practice locations were screened under Medicare, instead of requiring state Medicaid programs to redundantly screen Medicare-enrolled practice locations.

To ensure practice locations are enrolled in compliance with state and federal rules, while limiting the administrative burden for providers, these amendments revise rule provisions to require one enrollment application for each provider and all applicable application fees, and then leverage available Medicare data to ensure practice locations not included in the initial enrollment application are screened and validated. PIC forms, in lieu of a complete new application, will be accepted for limited-risk Medicaid providers and providers enrolled in both Medicaid and Medicare to update their practice locations. PIC forms or other supplemental forms will be revised as needed to indicate to the Texas Medicaid and Health Partnership and the HHSC Office of the Inspector General when the submitted form is not sufficient and will indicate that an enrollment application must be submitted for the new practice location (e.g. if the new location is associated with a new program or provider type or ownership change).

COMMENTS

The 30-day comment period ended March 14, 2016. During this period, HHSC received one positive comment regarding the amended rules.

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2016.

TRD-201601693
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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Proposal publication date: February 12, 2016
For further information, please call: (512) 424-6900

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CHAPTER 353. MEDICAID MANAGED CARE

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §353.4

The Texas Health and Human Service Commission (HHSC) adopts amendments to §353.4, concerning Managed Care Organization Requirements Concerning Out-of-Network Providers, with minor clarifying changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7316). The text of the rule will be republished.

BACKGROUND AND JUSTIFICATION

Nursing facility services were carved into Medicaid managed care effective March 1, 2015. As a result of this change, HHSC is amending and adding rule language consistent with managed

care contract requirements related to managed care reimbursement of out-of-network nursing facility services.

Additionally, HHSC is taking this opportunity to amend and add new language related to out-of-network emergency transport and other authorized out-of-network services. Also, this rule amendment makes clarifying changes to managed care out-of-network usage standards and reporting.

COMMENTS

The 30-day comment period ended December 6, 2015. During this period, HHSC received comments regarding the amended rule from the Texas Association of Health Plans (TAHP). A summary of comments relating to the rule and HHSC's responses follows.

Comment: Subsections (b) and (c) do not address whether managed care organization (MCOs) will be required to make payment to an out-of-network provider who is not enrolled in the Texas Medicaid program and does not have a Texas Provider Identifier (TPI) number. If the out-of-network provider is not a Medicaid-enrolled provider, the MCO cannot submit the associated encounters to HHSC. This is particularly an issue with out-of-state, out-of-network providers.

HHSC could address this issue one of two ways: 1) Allow MCOs to submit encounters for out-of-network providers with the NPI only (do not require TPI); or 2) Clarify in the proposed rule that payment is only owed to an out-of-network provider if the provider is a Texas Medicaid-enrolled provider. If MCOs are required to pay for these services, TAHP believes they should be able to send these encounters to HHSC's data warehouse to ensure that complete MCO payment history is received by the state."

Response: All providers (including out-of-network providers) reimbursed for Medicaid covered services must be enrolled with Texas Medicaid. HHSC will address this clarification in future rulemaking.

Comment: In subsection (b)(1), TAHP recommends adding "authorized" as indicated below:

(1) Nursing facility services. A health care MCO must reimburse an out-of-network nursing facility for medically necessary services authorized by the Texas Department of Aging and Disability Services (DADS), using the reasonable reimbursement methodology in subsection (d) of this section. Nursing facility add-on services are considered "other authorized services" under paragraph (2) of this subsection, and are authorized by STAR+PLUS managed care organizations (MCOs).

Response: HHSC agrees with this clarification and has amended the rule language accordingly. DADS is responsible for authorizing the nursing facility unit rate, Medicare co-insurance, and ventilator and tracheostomy care. DADS also maintains medical necessity for nursing facility level of care determinations. Nursing facility add-on services are authorized by STAR+PLUS MCOs.

Comment: In subsection (f), TAHP supports HHSC's proposed change from total dollars billed to total dollars for paid claims.

Response: HHSC acknowledges TAHP's comment and no changes to the rule are needed.

In addition, the last paragraph in subsection (c) was changed for adoption to new subsection (d), and the rule was re-lettered accordingly. Subsection (c) relates to emergency services, and the last paragraph under that section, in the proposed version of the rule, was revised to apply to both emergency and non-emergency services. Therefore, the information in that paragraph needed to be separate from the rest of subsection (c). Also, the reference to nursing facility unit rate was changed for adoption to refer to the Medicaid fee-for-service rate daily rate. Other minor corrections were made for adoption.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

§353.4. Managed Care Organization Requirements Concerning Out-of-Network Providers.

(a) Network adequacy. HHSC is the state agency responsible for overseeing and monitoring the Medicaid managed care program. Each managed care organization (MCO) participating in the Medicaid managed care program must offer a network of providers that is sufficient to meet the needs of the Medicaid population who are MCO members. HHSC monitors MCO members' access to an adequate provider network through reports from the MCOs and complaints received from providers and members. Certain reporting requirements are discussed in subsection (f) of this section.

(b) MCO requirements concerning coverage for treatment of members by out-of-network providers for non-emergency services.

(1) Nursing facility services. A health care MCO must reimburse an out-of-network nursing facility for medically necessary services authorized by the Texas Department of Aging and Disability Services (DADS), using the reasonable reimbursement methodology in subsection (e) of this section. Nursing facility add-on services are considered "other authorized services" under paragraph (2) of this subsection, and are authorized by STAR+PLUS MCOs.

(2) Other authorized services. The MCO must allow referral of its member(s) to an out-of-network provider, must timely issue the proper authorization for such referral, and must timely reimburse the out-of-network provider for authorized services provided if the criteria in this paragraph are met. If all of the following criteria are not met, an out-of-network provider is not entitled to Medicaid reimbursement for non-emergency services:

(A) Medicaid covered services are medically necessary and these services are not available through an in-network provider;

(B) a participating provider currently providing authorized services to the member requests authorization for such services to be provided to the member by an out-of-network provider; and

(C) the authorized services are provided within the time period specified in the MCO's authorization. If the services are not provided within the required time period, a new request for referral from the requesting provider must be submitted to the MCO prior to the provision of services.

(c) MCO requirements concerning coverage for treatment of members by out-of-network providers for emergency services.

(1) An MCO may not refuse to reimburse an out-of-network provider for medically necessary emergency services.

(2) Health care MCO requirements concerning emergency services.

(A) A health care MCO may not refuse to reimburse an out-of-network provider for post-stabilization care services provided as a result of the MCO's failure to authorize a timely transfer of a member.

(B) A health care MCO must allow its members to be treated by any emergency services provider for emergency services, and services to determine if an emergency condition exists. The health care MCO must pay for such services.

(C) A health care MCO must reimburse for transport provided by an ambulance provider for a Medicaid recipient whose condition meets the definition of an emergency medical condition. Facility-to-facility transports are considered emergencies if the required treatment for the emergency medical condition, as defined in §353.2 of this subchapter (relating to Definitions), is not available at the first facility and the MCO has not included payment for such transports in the hospital reimbursement.

(D) A health care MCO is prohibited from requiring an authorization for emergency services or for services to determine if an emergency condition exists.

(3) Dental MCO requirements concerning emergency services.

(A) A dental MCO must allow its members to be treated for covered emergency services that are provided outside of a hospital or ambulatory surgical center setting, and for covered services provided outside of such settings to determine if an emergency condition exists. The dental MCO must pay for such services.

(B) A dental MCO is prohibited from requiring an authorization for the services described in subparagraph (A) of this paragraph.

(C) A dental MCO is not responsible for payment of non-capitated emergency services and post-stabilization care provided in a hospital or ambulatory surgical center setting, or devices for craniofacial anomalies. A dental MCO is not responsible for hospital and physician services, anesthesia, drugs related to treatment, and post-stabilization care for:

(i) a dislocated jaw, traumatic damage to a tooth, and removal of a cyst;

(ii) an oral abscess of tooth or gum origin; and

(iii) craniofacial anomalies.

(D) The services and benefits described in subparagraph (C) of this paragraph are reimbursed:

(i) by a health care MCO, if the member is enrolled in a managed care program; or

(ii) by HHSC's claims administrator, if the member is not enrolled in a managed care program.

(d) An MCO may be required by contract with HHSC to allow members to obtain services from out-of-network providers in circumstances other than those described in subsections (b) - (c) of this section.

(e) Reasonable reimbursement methodology.

(1) Out-of-network nursing facilities.

(A) Out-of-network nursing facilities must be reimbursed:

(i) at or above ninety-five percent of the nursing facility unit rate established by HHSC for the dates of service for services provided inside of the MCO's service area; and

(ii) at or above one hundred percent of the nursing facility unit rate for the date of services for services provided outside of the MCO's service area.

(B) The nursing facility unit rate refers to the Medicaid fee-for-service (FFS) daily rate for nursing facility providers as determined by HHSC. The rate includes items such as room and board, medical supplies and equipment, personal needs items, social services, and over-the-counter drugs. The nursing facility unit rate also includes professional and general liability insurance and applicable nursing facility rate enhancements. The nursing facility unit rate excludes nursing facility add-on services.

(2) Emergency and authorized services performed by out-of-network providers.

(A) Except as provided in §353.913 of this chapter (relating to Managed Care Organization Requirements Concerning Out-of-Network Outpatient Pharmacy Services) or subsection (i)(2) of this section, the MCO must reimburse an out-of-network, in-area service provider the Medicaid FFS rate in effect on the date of service less five percent, unless the parties agree to a different reimbursement amount.

(B) Except as provided in §353.913 of this chapter, an MCO must reimburse an out-of-network, out-of-area service provider at 100 percent of the Medicaid FFS rate in effect on the date of service, unless the parties agree to a different reimbursement amount, until the MCO arranges for the timely transfer of the member, as determined by the member's attending physician, to a provider in the MCO's network.

(3) For purposes of this subsection, the Medicaid FFS rates are defined as those rates for providers of services in the Texas Medicaid program for which reimbursement methodologies are specified in Chapter 355 of this title (relating to Reimbursement Rates), exclusive of the rates and payment structures in Medicaid managed care.

(f) Reporting requirements.

(1) Each MCO that contracts with HHSC to provide health care services or dental services to members in a service area must submit quarterly information in its Out-of-Network quarterly report to HHSC.

(2) Each report submitted by an MCO must contain information about members enrolled in each HHSC Medicaid managed care program provided by the MCO. The report must include the following information:

(A) the types of services provided by out-of-network providers for the MCO's members;

(B) the scope of services provided by out-of-network providers to the MCO's members;

(C) for a health care MCO, the total number of hospital admissions, as well as the number of admissions that occur at each out-of-network hospital. Each out-of-network hospital must be identified;

(D) for a health care MCO, the total number of emergency room visits, as well as the total number of emergency room visits that occur at each out-of-network hospital. Each out-of-network hospital must be identified;

(E) total dollars for paid claims by MCOs, other than those described in subparagraphs (C) and (D) of this paragraph, as well as total dollars billed by out-of-network providers for other services; and

(F) any additional information required by HHSC.

(3) HHSC determines the specific form of the report described in this subsection and includes the report form as part of the Medicaid managed care contract between HHSC and the MCOs.

(g) Utilization.

(1) Upon review of the reports described in subsection (f) of this section that are submitted to HHSC by the MCOs, HHSC may determine that an MCO exceeded maximum out-of-network usage standards set by HHSC for out-of-network access to health care services and dental services during the reporting period.

(2) Out-of-network usage standards.

(A) Inpatient admissions: No more than 15 percent of a health care MCO's total hospital admissions, by service area, may occur in out-of-network facilities.

(B) Emergency room visits: No more than 20 percent of a health care MCO's total emergency room visits, by service area, may occur in out-of-network facilities.

(C) Other services: For services that are not included in subparagraph (A) or (B) of this paragraph, no more than 20 percent of total dollars for paid claims by the MCO for services provided may be provided by out-of-network providers.

(3) Special considerations in calculating a health care MCO's out-of-network usage of inpatient admissions and emergency room visits.

(A) In the event that a health care MCO exceeds the maximum out-of-network usage standard set by HHSC for inpatient admissions or emergency room visits, HHSC may modify the calculation of that health care MCO's out-of-network usage for that standard if:

(i) the admissions or visits to a single out-of-network facility account for 25 percent or more of the health care MCO's admissions or visits in a reporting period; and

(ii) HHSC determines that the health care MCO has made all reasonable efforts to contract with that out-of-network facility as a network provider without success.

(B) In determining whether the health care MCO has made all reasonable efforts to contract with the single out-of-network facility described in subparagraph (A) of this paragraph, HHSC considers at least the following information:

(i) how long the health care MCO has been trying to negotiate a contract with the out-of-network facility;

(ii) the in-network payment rates the health care MCO has offered to the out-of-network facility;

(iii) the other, non-financial contractual terms the health care MCO has offered to the out-of-network facility, particularly those relating to prior authorization and other utilization management policies and procedures;

(iv) the health care MCO's history with respect to claims payment timeliness, overturned claims denials, and provider complaints;

(v) the health care MCO's solvency status; and

(vi) the out-of-network facility's reasons for not contracting with the health care MCO.

(C) If the conditions described in subparagraph (A) of this paragraph are met, HHSC may modify the calculation of the health care MCO's out-of-network usage for the relevant reporting period and standard by excluding from the calculation the inpatient admissions or emergency room visits to that single out-of-network facility.

(h) Provider complaints.

(1) HHSC accepts provider complaints regarding reimbursement for or overuse of out-of-network providers and conducts investigations into any such complaints.

(2) When a provider files a complaint regarding out-of-network payment, HHSC requires the relevant MCO to submit data to support its position on the adequacy of the payment to the provider. The data includes a copy of the claim for services rendered and an explanation of the amount paid and of any amounts denied.

(3) Not later than the 60th day after HHSC receives a provider complaint, HHSC notifies the provider who initiated the complaint of the conclusions of HHSC's investigation regarding the complaint. The notification to the complaining provider includes:

(A) a description of the corrective actions, if any, required of the MCO in order to resolve the complaint; and

(B) if applicable, a conclusion regarding the amount of reimbursement owed to an out-of-network provider.

(4) If HHSC determines through investigation that an MCO did not reimburse an out-of-network provider based on a reasonable reimbursement methodology as described in subsection (e) of this section, HHSC initiates a corrective action plan. Refer to subsection (i) of this section for information about the contents of the corrective action plan.

(5) If, after an investigation, HHSC determines that additional reimbursement is owed to an out-of-network provider, the MCO must:

(A) pay the additional reimbursement owed to the out-of-network provider within 90 days from the date the complaint was received by HHSC or 30 days from the date the clean claim, or information required that makes the claim clean, is received by the MCO, whichever comes first; or

(B) submit a reimbursement payment plan to the out-of-network provider within 90 days from the date the complaint was received by HHSC. The reimbursement payment plan provided by the MCO must provide for the entire amount of the additional reimbursement to be paid within 120 days from the date the complaint was received by HHSC.

(6) If the MCO does not pay the entire amount of the additional reimbursement within 90 days from the date the complaint was received by HHSC, HHSC may require the MCO to pay interest on the unpaid amount. If required by HHSC, interest accrues at a rate of 18 percent simple interest per year on the unpaid amount from the 90th day after the date the complaint was received by HHSC, until the date the entire amount of the additional reimbursement is paid.

(7) HHSC pursues any appropriate remedy authorized in the contract between the MCO and HHSC if the MCO fails to comply with a corrective action plan under subsection (i) of this section.

(i) Corrective action plan.

(1) HHSC requires a corrective action plan in the following situations:

(A) the MCO exceeds a maximum standard established by HHSC for out-of-network access to health care services and dental services described in subsection (g) of this section; or

(B) the MCO does not reimburse an out-of-network provider based on a reasonable reimbursement methodology as described in subsection (e) of this section.

(2) A corrective action plan imposed by HHSC requires one of the following:

(A) reimbursements by the MCO to out-of-network providers at rates that equal the allowable rates for the health care services as determined under §32.028 and §32.0281, Texas Human Resources Code, for all health care services provided during the period:

(i) the MCO is not in compliance with a utilization standard established by HHSC; or

(ii) the MCO is not reimbursing out-of-network providers based on a reasonable reimbursement methodology, as described in subsection (e) of this section;

(B) initiation of an immediate freeze by HHSC on the enrollment of additional recipients in the MCO's managed care plan until HHSC determines that the provider network under the managed care plan can adequately meet the needs of the additional recipients;

(C) education by the MCO of members enrolled in the MCO regarding the proper use of the MCO's provider network; or

(D) any other actions HHSC determines are necessary to ensure that Medicaid recipients enrolled in managed care plans provided by the MCO have access to appropriate health care services or dental services, and that providers are properly reimbursed by the MCO for providing medically necessary health care services or dental services to those recipients.

(j) Application to Pharmacy Providers. The requirements of this section do not apply to providers of outpatient pharmacy benefits, except as noted in §353.913 of this chapter (relating to Managed Care Organization Requirements Concerning Out-of-Network Outpatient Pharmacy Services).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2016.

TRD-201601694
Karen Ray
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TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 15. CORPORATE ACTIVITIES

SUBCHAPTER A. FEES AND OTHER PROVISIONS OF GENERAL APPLICABILITY

7 TAC §15.2, §15.3

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §15.2, concerning filing and investigation fees, and §15.3, concerning expedited filings without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1561). The amended rules will not be republished. The amendments to §15.2 and §15.3 conform to an amendment of 7 TAC §15.42(j), concerning relocation of bank branch offices.

Current rules provide that branch relocations within a one-mile radius may be filed with an expedited status, provided several conditions are met. The current fee for filing an application for a branch relocation is $2,000, or $1,000 if filed under expedited status. Under the amendment to 7 TAC §15.42(j), filings for branch relocations within a one-mile radius are effective immediately upon the banking commissioner's acknowledgement of receipt of the reduced filing fee of $200 and the form prescribed by the banking commissioner. The amendment to §15.2 reduces the filing fee from $2,000 to $200 for branch relocations within a one-mile radius. The amendment to §15.3 deletes the provision concerning expedited filings for branch relocations of less than one mile.

The department received two comments in support of the proposed amendments from the Independent Bankers Association of Texas and Comerica Bank.

The amendments are adopted under Finance Code, §32.203(b), which provides that the commission may adopt rules establishing standards for the approval of branch offices.

Finance Code, §203.001, is affected by the amended sections.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2016.

TRD-201601762
Catherine Reyer
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SUBCHAPTER C. BANK OFFICES

7 TAC §15.42

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendment to §15.42, concerning establishment and closing of a branch office without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1562). The amended rule will not be republished. The amendment is adopted to streamline and clarify the requirements concerning relocation of bank branch offices within a one-mile radius.

Under current rules, banks wishing to relocate a branch must file an application and receive approval by the banking commissioner, regardless of the distance of relocation. These requirements are inconsistent with and more burdensome than corresponding requirements imposed by federal banking regulators.

In addition, the burdensomeness of the current requirements effectively encourages banks desiring to relocate a branch to circumvent the rules by opening a new branch and then closing the old branch soon after. These amendments provide that for relocations within a one-mile radius, only notice and a nominal filing fee are required. Banks seeking to relocate a branch outside a one-mile radius would follow the procedures for closing and opening a branch.

The department received one comment in support of the proposed amendment from the Independent Bankers Association of Texas.

The amendment is adopted under Finance Code, §32.203(b), which provides that the commission may adopt rules establishing standards for the approval of branch offices.

Finance Code, §203.001 is affected by the amended section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 19. TRUST COMPANY LOANS AND INVESTMENTS

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts repeal of §19.1 and §19.21, concerning Grandfathered Loans and Grandfathered Investments, respectively, without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1563). The repealed rules will not be republished.

The department received no comments regarding the proposed repeal.

SUBCHAPTER A. LOANS

7 TAC §19.1

The repeal of 19.1 is adopted under Finance Code, §181.003, which provides the authority to adopt rules to implement and clarify the Texas Trust Company Act.

Finance Code §184.201 is affected by the repealed section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Catherine Reyer
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SUBCHAPTER B. INVESTMENTS

7 TAC §19.21

The repeal of 19.21 is adopted under Finance Code, §181.003, which provides the authority to adopt rules to implement and clarify the Texas Trust Company Act.

Finance Code §184.101 is affected by the repealed section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 21. TRUST COMPANY CORPORATE ACTIVITIES

SUBCHAPTER B. TRUST COMPANY CHARTERING AND POWERS

7 TAC §21.24

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts an amendment to §21.24, concerning exemptions for family trust companies, without changes to the proposed text as published in the March, 4, 2016, issue of the *Texas Register* (41 TexReg 1564). The amended rule will not be republished.

Finance Code §182.011 and §182.012 were amended effective September 1, 2015, by Sections 5 and 6 of S.B. 875 (Acts 2015, 84th Leg., R.S., Ch. 250, §5 - §6), to materially revise the requirements for exemption as a family trust company. Effective September 1, 2015, the exemption is available to a trust company that serves only individuals related within the seventh degree to a shared common ancestor and their related interests, provided the trust company is wholly owned by family members, see Finance Code §182.011(a).

To implement this change in law, §21.24 was amended effective January 7, 2016, to specify the information that must be contained in an application for exemption as a family trust company, and to make other conforming changes, see the January 1, 2016, issue of the *Texas Register* (41 TexReg 110). However, revised language in §21.24(b)(2)(C), regarding the required inclusion and disclosure in an exempt trust company's certificate of formation of eligible family members, was drafted too broadly.

As a result, the description of eligible clients could have been interpreted to include individuals that are not eligible members of the family as defined by §21.24(a)(1). The amendment to §21.24(b)(2)(C) clarifies that eligible family members must be descendants of the designated shared common ancestor.

The department received no comments regarding the proposed amendment.

The amendment is adopted pursuant to Finance Code §181.003, which grants the commission authority to adopt rules to implement and clarify applicable law, and Finance Code §182.011(e)(2) - (4), which grants the commission authority to adopt rules (1) specifying the provisions of Finance Code, Title 3, Subtitle F that are subject to an exemption request, (2) establishing procedures and requirements for obtaining, maintaining, or revoking an exemption, and (3) defining or further defining terms used in Finance Code §182.011.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2016.

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Catherine Reyer
General Counsel
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SUBCHAPTER D. TRUST COMPANY OFFICES

7 TAC §21.43, §21.44

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts new §21.43 and §21.44, concerning representative trust offices of out-of-state trust institutions, without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1565) and they will not be republished.

The new sections implement and clarify the requirements of Finance Code §187.201 and §187.202, which purport to govern the establishment in this state of a representative trust office by an out-of-state trust institution. A representative trust office is a limited purpose office for servicing existing clients and soliciting new clients, and for other purposes specified in Finance Code §187.201. Pursuant to Finance Code §187.202, a trust institution must register such an office with the banking commissioner, who may then allow the office to be established or postpone the office until the banking commissioner approves the office in writing.

With respect to federally chartered banks, the full extent of such approval authority could prevent or significantly interfere with the bank's exercise of its federally granted power to act as a fiduciary, which could result in federal preemption of any infringing requirements, see 12 U.S.C. §25b and §1465. Further, because a state-chartered bank that is federally insured is subject to federal regulation as extensive as that applied to a federally chartered bank, requirements applicable to establishment of a representative trust office should be similar to those imposed on a federally chartered bank to avoid harming the viability of the state charter and to better support the dual banking system.

For these reasons, §21.43 establishes a limited, non-discretionary registration regime applicable to a federally chartered or federally insured bank that wishes to establish a representative trust office in Texas. Based on a simplified registration that identifies the bank and its proposed office location, accompanied by copies of any notice or application filed with a home state regulator or federal regulatory agency and proof that the bank has registered to do business in Texas pursuant to Finance Code §201.102, the office may be established immediately after filing. A registration submitted under §21.43 is not subject to banking commissioner approval or disapproval.

With respect to a state-chartered trust company or bank that is not federally insured, the depth and breadth of regulatory supervision can vary greatly depending on the jurisdiction of formation. With respect to these institutions, §21.44 fully implements Finance Code §187.202, enabling the banking commissioner to exercise judgment and discretion regarding whether such an out-of-state institution may establish a representative trust office in Texas.

A state-chartered trust company or uninsured bank that wishes to establish a representative trust office in Texas is required to file a notice with the banking commissioner containing the information specified by §21.44(a). Pursuant to §21.44(b), the institution must also submit its written agreement to, among other provisions, maintain tangible equity capital in an amount that equals or exceeds the minimum amount of restricted capital required for a state trust company pursuant to Finance Code §182.008 while it has an office in Texas. (Tangible equity capital is equal to the total of owner's equity, surplus, and undivided profits reduced by the total of intangible assets, see §21.44(a)(9).)

Under §21.44(c), the institution may commence business at its proposed office location on the 31st day after the date the banking commissioner receives the notice unless the banking commissioner specifies an earlier or later date, except that the banking commissioner may extend the 30-day statutory period of review based on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the institution may not open the proposed representative trust office unless the banking commissioner approves establishment of the office in writing. The banking commissioner may deny approval of the representative trust office if the banking commissioner finds that the institution lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest.

Finally, both §21.43(c) and §21.44(d) permit an institution that has lawfully established and is maintaining a representative trust office in Texas to establish additional representative trust offices in Texas without providing additional notice to the banking commissioner.

The Department received no comments regarding the proposed sections.

The new sections are adopted pursuant to Finance Code §181.003(a)(1), which authorizes the commission to adopt rules that are necessary or reasonable to implement and clarify the Texas Trust Company Act, codified as Finance Code, Title 3, Subtitle F.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Department of Banking
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PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 51. CHARTER APPLICATIONS

7 TAC §§51.1 - 51.9, 51.13, 51.14

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §§51.1 - 51.9, 51.13, and 51.14 in 7 TAC Chapter 51, concerning charter applications regarding savings and loan associations, without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1567). The rules will not be republished.

In general, the purpose of the adoption regarding these rules for charter applications is to implement changes resulting from the commission's review of Chapter 51 under Texas Government Code §2001.039.

The adopted amendments include updates in terminology, improvements in application flexibility and efficiency, gender-neutralization of references to the Commissioner, and improvements in wording and grammar.

Section 51.1 addresses the application process for the incorporation of a savings and loan association. The adopted amendments to this section update terminology to match Business Organizations Code, generalize the format of information provided to the agency, make references to the Commissioner gender neutral, and provide a grammatical clarification.

Section 51.2 addresses the savings and loan charter application form and initial review process. The adopted amendments make references to the Commissioner gender neutral and clarify that the initial application investigation may take the form of an onsite review.

Section 51.3 addresses the hearing process for savings and loan charter applications. The adopted amendment clarifies that an application must be substantially complete before the deadline to set a hearing can be determined.

Section 51.4 addresses the publication of notice of a charter application. The adopted amendment removes the form prescribed in the rule and substitutes that the format must be acceptable to the Commissioner. The agency maintains templates for standard applications that are available to any party on request.

Section 51.5 addresses the notice to other associations of a savings and loan association. The adopted amendment clarifies the notice is permissible to parties outside the immediate geographic area, consistent with the agency's practice to provide notice statewide.

Section 51.6 addresses the proof of publication of a notice of a savings and loan charter application. The adopted amendment removes unnecessary words relating to another section of this title.

Section 51.7 addresses the holding of a hearing on a request of the proposed incorporators. The adopted amendment provides the Commissioner with discretion in this matter.

Section 51.8 addresses the purpose of a hearing on a savings and loan charter application and any post-hearing investigation. The adopted amendments make references to the Commissioner gender neutral.

Section 51.9 addresses the deadline for a decision on a savings and loan charter application. The adopted amendments make references to the Commissioner gender neutral.

Section 51.13 addresses savings and loan management qualifications. The adopted amendments improve grammar, flow, and gender neutrality.

Section 51.14 requires the Commissioner to provide notice of completion status to savings and loan charter applicants within 30 days of receipt of an application. The adopted amendment removes unnecessary words relating to another section of this title.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks. The amendments are also adopted under Texas Finance Code §§64.001, 64.002 and 64.083, which provide that the commission may adopt rules relating to associations' loans and investments. The amendments are also adopted under Texas Finance Code §66.002, which authorizes the commission to adopt rules regarding enforcement and regulation.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2016.

TRD-201601787
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1297

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CHAPTER 53. ADDITIONAL OFFICES

7 TAC §§53.1 - 53.4, 53.8 - 53.10, 53.17, 53.18

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §§53.1 - 53.4, 53.8 - 53.10, 53.17, and 53.18 in 7 TAC Chapter 53, concerning additional offices, without changes to the proposed text as published in the

March 4, 2016, issue of the *Texas Register* (41 TexReg 1569). The rules will not be republished.

In general, the purpose of the adoption regarding these rules for additional offices is to implement changes resulting from the commission's review of Chapter 53 under Texas Government Code §2001.039.

The adopted amendments include corrections of wording, capitalization, and punctuation; efforts to enhance consistency between various application and hearing processes; gender neutralization of a reference to the Commissioner, the removal of a restriction on extensions of approved offices, and the addition and revision of language to provide enhanced clarity.

Section 53.1 addresses the establishment of additional offices of a savings and loan association. The adopted amendment corrects and provides word choice and provide a one-year deadline for the applicant to open an approved office.

Section 53.2 addresses the types of additional offices permitted for a savings and loan association. The adopted amendments correct word choice and capitalization.

Section 53.3 addresses branch applications for savings and loan associations. The adopted amendments provide clarification and correct word choice, and make the hearing process for such an application consistent with that prescribed for other types of applications.

Section 53.4 addresses the findings required for the Commissioner to approve a branch application for a savings and loan association. The adopted amendments make references to the commissioner gender neutral, provide clarifying words and phrases, correct capitalization and punctuation, and remove a restriction on extensions available for commencement of operations.

Section 53.8 addresses mobile facilities of savings and loan associations. The adopted amendments correct capitalization and punctuation.

Section 53.9 addresses the exemption from application requirements for a supervisory sale of savings and loan association offices or assets. The adopted amendments provide clarifying language and remove unnecessary words in reference to other sections of this title.

Section 53.10 addresses the conditions necessary for a sale of an office or assets to qualify as a supervisory sale from a savings and loan association. The adopted amendments revise existing language to provide enhanced clarity.

Section 53.18 addresses savings and loan association offices in other states or territories. The adopted amendments make the application and hearing processes for such offices consistent with those for domestic offices.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks. The amendments are also adopted under Texas Finance Code §§64.001, 64.002 and 64.083, which provide that the commission may adopt rules relating to associations' loans and investments. The amendments are also adopted under Texas Finance Code §66.002, which authorizes the commission to adopt rules regarding enforcement and regulation.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 57. CHANGE OF OFFICE LOCATION OR NAME

7 TAC §§57.1 - 57.4

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §§57.1, 57.2, 57.3 and 57.4 in 7 TAC Chapter 57, concerning change of office location or name, without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1572). The rules will not be republished.

In general, the purpose of the adoption regarding these rules for change of office location or name is to implement changes resulting from the commission's review of Chapter 57 under Texas Government Code §2001.039.

The adopted amendments include clarifying language, gender neutralization of references to the Commissioner, and efforts to enhance consistency between various application and hearing processes.

Section 57.1 addresses changes of office locations for savings and loan associations. The adopted amendments provide clarifying revisions, make references to the Commissioner gender neutral, and provide a specific reference to applicable requirements in this title.

Section 57.2 addresses the hearing process applicable to office relocation for a savings and loan association. The adopted amendment makes the hearing process consistent with that applicable to other types of applications.

Section 57.3 addresses the changing of the name of a savings and loan association. The adopted amendments make references to the Commissioner gender neutral.

Section 57.4 addresses application forms relevant to this chapter. The adopted amendments improve and correct word choices.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks. The amendments are also adopted under Texas Finance Code §§64.001, 64.002 and 64.083, which provide that the commission may adopt rules relating to associations' loans and investments. The amendments are also adopted under Texas

Finance Code §66.002, which authorizes the commission to adopt rules regarding enforcement and regulation.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 59. FOREIGN BUILDING AND LOAN ASSOCIATION

7 TAC §59.1

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts the repeal of §59.1 in 7 TAC Chapter 59, concerning Foreign Building and Loan Associations, without changes to the proposal as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1573).

In general, the purpose of the repeal of the rule regarding foreign building and loan associations is to implement changes resulting from the commission's review of Chapter 59 under Texas Government Code §2001.039.

Being that the repeal of §59.1 is adopted, the entirety of Chapter 59 will cease to exist.

Section 59.1 was made unnecessary by federal law which facilitates interstate transactions.

The department received no comments regarding the proposed repeal.

The repeal is adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks. The repeal is also adopted under Texas Finance Code §§64.001, 64.002 and 64.083, which provide that the commission may adopt rules relating to the associations' loans and investments. The repeal is also adopted under Texas Finance Code §66.002, which authorizes the commission to adopt rules regarding enforcement and regulation.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1297

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CHAPTER 61. HEARINGS

7 TAC §61.1, §61.3

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §61.1 and §61.3 in 7 TAC Chapter 61, concerning hearings. The rules are adopted without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1573) and will not be republished.

In general, the purpose of the adoption regarding these rules for hearings is to implement changes resulting from the commission's review of Chapter 61 under Texas Government Code §2001.039.

The adopted amendments include the removal of unnecessary words and correction of the names of agencies and the title of the Texas Government Code.

Section 61.1 addresses the use of a hearings officer for savings and loan association matters. The adopted amendments reduce and correct references to the Texas Government Code and Finance Commission agencies.

Section 61.3 addresses the publication of a hearing notice relating to applications of savings and loan associations. The adopted amendments remove unnecessary words in reference to other sections of this title.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks. The amendments are also adopted under Texas Finance Code §§64.001, 64.002, and 64.083, which provide that the commission may adopt rules relating to associations' loans and investments. The amendments are also adopted under Texas Finance Code §66.002, which authorizes the commission to adopt rules regarding enforcement and regulation.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 63. FEES AND CHARGES

7 TAC §§63.1 - 63.9, 63.11, 63.12, 63.15

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §§63.1 - 63.9, 63.11, 63.12, and 63.15 in 7 TAC Chapter 63, concerning Fees and Charges. The amendments are adopted without changes to the proposed text

as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1574) and will not be republished.

In general, the purpose of the adoption regarding these rules for fees and charges is to implement changes resulting from the commission's review of Chapter 63 under Texas Government Code §2001.039.

The adopted amendments include improvements in word choice, two reductions in fees and one increase in fees, removal of unnecessary words, updates to covered corporate documents, clarification, gender neutralization of a reference to the Commissioner, and replacement of public information request fees with those prescribed by the Texas Attorney General.

Section 63.1 addresses the application fee for a savings and loan charter. The adopted amendment improves word choice.

Section 63.2 addresses the application fee for a savings and loan branch office. The adopted amendments reduce the fee and improve word choice.

Section 63.3 addresses the application fee for a savings and loan mobile facility. The adopted amendments remove unnecessary words in reference to another chapter, and improve word choice.

Section 63.4 addresses the application fee for a savings and loan association name change. The adopted amendment improves word choice.

Section 63.5 addresses the fee for special examinations of savings and loan associations. The adopted amendment removes unnecessary words and improves word choice.

Section 63.6 addresses the application fee for amendments to corporate documents of savings and loan associations. The adopted amendment adds "certificate of formation" as such a document.

Section 63.7 addresses the application fee for a savings and loan association to issue a capital obligation. The adopted amendments increases the fee, remove unnecessary words in reference to another section of this title, and provide clarifying language.

Section 63.8 addresses the annual assessments of savings and loan associations. The adopted amendments improve word choice and remove unnecessary words.

Section 63.9 addresses the fees for a savings and loan association to reorganize, merge, or consolidate. The adopted amendments remove unnecessary words in reference to other sections of this title.

Section 63.11 addresses the application fee for a change of control of a savings and loan association. The adopted amendments remove unnecessary words in reference to another chapter within this title.

Section 63.12 addresses the application fees for subsidiaries of savings and loan associations. The adopted amendments reduce the initial fee.

Section 63.15 addresses the fees charged for public information requests. The adopted amendments remove unnecessary words in reference to the Texas Government Code and clarify that reference, replace listed fees with reference to those established and maintained by the Texas Attorney General, make a reference to the Commissioner gender neutral, and provide clarifying language relating to the confidentiality of certain documents.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks. The amendments are also adopted under Texas Finance Code §§64.001, 64.002, and 64.083, which provide that the commission may adopt rules relating to associations' loans and investments. The amendments are also adopted under Texas Finance Code §66.002, which authorizes the commission to adopt rules regarding enforcement and regulation.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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7 TAC §63.10, §63.14

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts the repeal of §63.10 and §63.14 in 7 TAC Chapter 63, concerning Fees and Charges, without changes to the proposal as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1576)

In general, the purpose of the repeal of the rules regarding fees and charges is to implement changes resulting from the commission's review of Chapter 63 under Texas Government Code §2001.039.

Section 63.10 addressed the fee for remote applications such as automated teller machines ("ATMs"). Such a fee is not charged to state savings banks and is therefore deemed unnecessary for savings and loan associations.

Section 63.14 addressed the fee for conversion into another institution. Such a fee is not charged to state savings banks and is therefore deemed unnecessary for savings and loan associations.

The department received no comments regarding the proposed repeal.

The repeals are adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks. The repeals are also adopted under Texas Finance Code §§64.001, 64.002 and 64.083, which provide that the commission may adopt rules relating to the associations' loans and investments. The repeals are also adopted under Texas Finance Code §66.002, which authorizes the commission to adopt rules regarding enforcement and regulation.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 64. BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS, RESERVES, NET WORTH, EXAMINATIONS, CONSUMER COMPLAINTS

7 TAC §§64.1, 64.3, 64.4, 64.6, 64.7, 64.9, 64.10

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §§64.1, 64.3, 64.4, 64.6, 64.7, 64.9, and 64.10 in 7 TAC Chapter 64, concerning Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations and Consumer Complaints. Sections 64.1, 64.3, 64.6, 64.7, and 64.9 are adopted without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1577) and will not be republished. Section 64.4 and §64.10 are adopted with changes and are republished.

In general, the purpose of the adoption regarding these rules for books, records, accounting practices, financial statements, reserves, net worth, examinations and consumer complaints is to implement changes resulting from the commission's review of Chapter 64 under Texas Government Code §2001.039.

The adopted amendments include enhanced clarity of language, expansion of permissible record keeping processes, enhancement of financial audit requirements, enhancement to the consistency of accounting guidance, clarity of examination authority, and updated complaint processes.

Section 64.1 addresses the proper location of books and records of a savings and loan association. The adopted amendments improve word choice and punctuation, and expand on the permissibility of offsite electronic backups.

Section 64.3 permits the use of copies of savings and loan association records to substitute for destroyed physical documents. The adopted amendments improve phrasing and correct word choice, and expand the acceptable format of such copies to include electronic records.

Section 64.4 addresses annual financial reporting to the department. The adopted amendments remove distinctions of size and the requirement to submit an annual statement of condition, and instead require the submission of an annual independent audit consistent with predominant accounting and regulatory standards.

Section 64.6 addresses chargeoffs of and reserves against bad debts of savings and loan associations. The adopted amendment removes specific guidance and replaces it with a requirement to conform to Generally Accepted Accounting Principles (GAAP).

Section 64.7 addresses capital requirements for savings and loan associations. The adopted amendments clarify the interchangeable meaning of the terms "capital" and "net worth," and remove an unnecessary definition for "total liabilities," which is defined in existing and applicable accounting guidance.

Section 64.9 addresses examinations of savings and loan associations. The adopted amendments clarify that the Commissioner may designate personnel to examine an association, and add clarifying words.

Section 64.10 addresses the procedures a savings and loan association must follow to inform consumers of the appropriate means by which they may file a complaint against the association. The adopted amendments clarify the procedures and update the contact information for the Department. The proposed amendment to §64.10(b)(1) would have corrected the name of the Department and would have modified the internet contact information. An intra-agency comment was received leading to further discussion on the proposed amendment to this rule. As a result the Department subsequently modified the §64.10(b)(1) and the commission adopts the language to modify the internet contact information for the department and to add physical, telephone and fax contact information and the corrected name of the Department.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks. The amendments are also adopted under Texas Finance Code §§64.001, 64.002, and 64.083, which provide that the commission may adopt rules relating to associations' loans and investments. The amendments are also adopted under Texas Finance Code §66.002, which authorizes the commission to adopt rules regarding enforcement and regulation.

§64.4. Financial Statements; Annual Reports.
Within 90 days of its fiscal year end, each saving association shall, regardless of asset size, submit an independent audit of its financial statements and all correspondence reasonably related to the audit to the commissioner. The audit is to be performed in accordance with generally accepted auditing standards and the provisions of 12 CFR Part 363, with the exception of any matters specifically addressed by this section, the Act, or its related rules.

§64.10. Consumer Complaint Procedures.

(a) Definitions

(1) "Privacy notice" means any notice which a savings and loan association provides to consumers regarding the association's privacy practices, regardless of whether it is required by a specific state or federal law to provide such notice or provided to consumers voluntarily.

(2) "Required notice" means a notice in a form set forth or provided for in subsection (b)(1) of this section.

(b) Notice of how to file complaints

(1) In order to let its consumers know how to file complaints, savings and loan associations must use the following notice: The (name of savings and loan association) is chartered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Department of Savings and Mortgage Lending. Any consumer wishing to file a complaint against the (name of savings

and loan association) should contact the Department of Savings and Mortgage Lending through one of the means indicated below: In person or by U.S. Mail at 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, Telephone No.: (877) 276-5550, Fax No.: (512) 936-2003, or via electronic submission on the Department's website at http://www.sml.texas.gov/consumerinformation/tdsml_consumer_complaints.html.

(2) A required notice must be included in each privacy notice provided to consumers.

(3) A savings and loan association must provide consumers with the required notice in compliance with paragraph (1) of this section whether or not the savings and loan association is required by any state or federal law to provide privacy notices to its consumers.

(4) The following measures are deemed to be appropriate steps to give the required notice:

(A) In each area where a savings and loan association conducts business with consumers in person, the required notice, in the form specified in paragraph (1) of this section, must be conspicuously posted. A notice is deemed to be conspicuously posted if a customer with 20/20 vision can read it from the place where he or she would typically conduct business at that location or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.) are posted.

(B) At a minimum, the savings and loan association must provide the required notice when the customer relationship is established.

(C) If a savings and loan association maintains a web site, the required notice must be included in a screen which the consumer must view whenever the site is accessed.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 65. LOANS AND INVESTMENTS

7 TAC §§65.1 - 65.20, 65.23

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §§65.1 - 65.20 and 65.23 in 7 TAC Chapter 65, concerning Loans and Investments. Sections 65.1 - 65.11, 65.13, 65.15, 65.16, 65.18 - 65.20, and 65.23 are adopted without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1579) and will not be republished. Sections 65.12, 65.14, and 65.17 are adopted with changes and are republished.

In general, the purpose of the adoption regarding these rules for loans and investments is to implement changes resulting from the commission's review of Chapter 65 under Texas Government Code §2001.039.

The adopted amendments include the removal of unnecessary words, clarifications of terms and phrases, edits to promote gender neutrality, and updates to make rules consistent with prevailing guidance and regulations applicable to other depository charters.

Section 65.1 addresses permissible lending and investment products for savings and loan associations. The adopted amendments eliminate unnecessary words in reference to other sections of this title.

Section 65.2 provides an exemption from future rule changes for loans, investments, and letters of credit entered into in compliance with current savings and loan association rules. The adopted amendment corrects one word.

Section 65.3 provides definitions for use in this chapter. The adopted amendments update and clarify definitions and word choices, and make gender-specific references neutral.

Section 65.4 addresses a general limitation on loans made to One Borrower. The adopted amendment makes the limitation consistent with federal savings and loan associations by referring to the applicable federal statute.

Section 65.5 provides specific criteria applicable to residential real estate loans made by savings and loan associations. The adopted amendments update and clarify language without materially alter existing restrictions.

Section 65.6 provides specific criteria applicable to commercial real estate loans made by savings and loan associations. The adopted amendments update and clarify language without materially altering existing restrictions, and remove unnecessary words in reference to other sections of this title. An addition is adopted to permit home equity loans made in accordance with Chapter 153 without regard for additional restrictions imposed by this section.

Section 65.7 provides specific criteria applicable to unimproved real estate loans made by savings and loan associations. The adopted amendments clarify terms used and remove unnecessary words in reference to other sections of this title.

Section 65.8 provides specific criteria applicable to personal property loans made by savings and loan associations. The adopted amendments clarify terms used and a reference to another title, remove a specific limitation of loans to One Borrower, and remove unnecessary words in reference to another section of this title.

Section 65.9 provides specific criteria applicable to oil and gas loans made by savings and loan associations. The adopted amendments revise existing limitations based on more current information about the industry, clarify terms used, and remove unnecessary words in reference to another section of this title.

Section 65.10 provides specific criteria applicable to wraparound real estate loans made by savings and loan associations. The adopted amendments revise language for clarity and remove unnecessary words in reference to another section of this title.

Section 65.11 addresses loans and transactions between savings and loan associations and officers, directors, affiliates, and employees. The adopted amendment replaces existing

language with the requirements of federal regulations applicable to other depository charters through reference thereto.

Section 65.12 provides specific criteria applicable to unsecured loans made by savings and loan associations. The adopted amendments clarify terms used and remove unnecessary words in reference to another section of this title.

Section 65.13 provides specific criteria applicable to manufactured home loans made by savings and loan associations. The adopted amendments clarify terms and phrases, and replace dated appraisal requirements with those in effect for federally-supervised institutions.

Section 65.14 provides specific criteria applicable to home improvement loans made by savings and loan associations. The adopted amendments clarify terms, phrases, and references, remove unnecessary words in reference to another section of this title, and replace dated appraisal requirements with those in effect for federally-supervised institutions, repealing a then unnecessary paragraph.

Section 65.15 provides specific criteria applicable to acquisition, development, and construction loans made by savings and loan associations. The adopted amendments clarify terms used and remove unnecessary words in reference to another section of this title.

Section 65.16 provides specific criteria applicable to interim construction loans made by savings and loan associations. The adopted amendments clarify terms used and remove unnecessary words in reference to another section of this title.

Section 65.17 addresses loan policies and documentation. The adopted amendments clarify terms and references, remove dated federal agency names, and replace dated appraisal requirements with those in effect for federally-supervised institutions, repealing a then unnecessary paragraph.

Section 65.18 provides specific criteria applicable to letters of credit issued by savings and loan associations. The adopted amendments update references and clarify limitations on loans made to One Borrower.

Section 65.19 addresses investment made by savings and loan associations in real property. The adopted amendments clarify terms used.

Section 65.20 addresses investment made by savings and loan associations in deferred payment obligations. The adopted amendments clarify references to other titles.

Section 65.23 addresses restrictions on loan transactions with third parties. The adopted amendment makes a reference to the Commissioner gender neutral.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks. The amendments are also adopted under Texas Finance Code §§64.001, 64.002, and 64.083, which provide that the commission may adopt rules relating to associations' loans and investments. The amendments are also adopted under Texas Finance Code §66.002, which authorizes the commission to adopt rules regarding enforcement and regulation.

§65.12. Unsecured Loans.

(a) An association may make unsecured loans or participate in unsecured loans, provided that the aggregate amount of such unsecured loans to One Borrower shall not exceed $50,000 or 10% of the association's net worth, whichever is greater.

(b) All such loans shall be repayable in substantially equal monthly installments of principal and interest within a period not to exceed five years from the date the loan is made, unless other terms and repayment periods are allowed in subsection (c) of this section.

(c) Such loans may provide for repayment of interest only, not less than quarterly, so long as the loan fully matures and becomes payable within 24 months from the date the loan is made, or such loans may provide for repayment of interest only, not less than semi-annually, so long as the loan fully matures and becomes payable within 12 months from the date the loan is made.

(d) Real estate, personal property, or interests in oil and gas leases may be provided as security for such loans without meeting the requirements of this chapter for loans on such security, so long as all requirements of this section are met.

(e) Prior to funding a loan under this section, an association shall comply with the requirements of §65.17 of this title.

(f) No loan made pursuant to this section shall be renewed for more than two periods equal to the original term of the loan without a principal reduction in the minimum amount of 15% of the outstanding principal balance, or the prior written approval of the commissioner.

§65.14. Home Improvement Loans.

(a) An association may make or purchase participations in home improvement loans secured by a lien on a home, on the terms set out in this section. In no event shall the amount of the loan, when added to the unpaid balance of all prior liens, exceed 95% of the appraised value of the underlying collateral.

(b) Any such loan must mature and become payable within 240 months from the date the loan is made, and shall be repayable in monthly installments of principal and interest, or may mature and be repayable as allowed in §65.5(e)(1) or (2) of this title.

(c) Prior to funding a loan under this section, an association shall have in its permanent loan file the following documents and records:

(1) an application for the loan, signed by the borrower, which discloses the purpose for which the loan is sought, the identity of the security property, and the source of funds which will be used to repay the loan;

(2) a proposal signed by the borrower and, if applicable, the contractor reflecting the home improvements to be accomplished;

(3) financial information about the borrower consisting of the information in the applicant's current file at the local credit reporting agency, together with written certification by the borrower that no material adverse changes in the financial information have occurred since the date of such information. A current report shall contain information updated to within six months prior to the date of application for loan;

(4) a loan approval sheet, indicating the amount and terms of the loan, the date of loan approval, by whom approved, the signatures of the persons approving the loan, and any conditions of approval and certifying that the persons approving the loan have confirmed that limitation on loans to One Borrower is met;

(5) a loan settlement statement, indicating in detail the expenses, fees, and charges the borrower or borrowers have paid in connection with such loan;

(6) the promissory note signed by the borrower;

(7) the original of the signed instrument or instruments creating or constituting the lien securing the loan;

(8) evidence that the association will have a valid lien on the security property according to the terms of the loan documents;

(9) evidence that the home and all insurable improvements are insured against loss by a fire and extended coverage policy or its equivalent issued by an insurance company authorized to do business in the state in which the home is located and naming the association as coinsured, as its interest may appear; and

(10) for all loans covered under this section, an appraisal or evaluation completed in accordance with 12 C.F.R. §323.1, et seq.

(d) Other property may be provided as additional security for the loan, without meeting the requirements of this chapter for loans secured by such property, so long as all requirements of this section are met.

(e) Upon completion of the improvements financed by the loan, a certificate of completion executed by the owner or contractor shall be made part of the permanent loan file.

(f) A loan made under this section may include add-on interest as authorized by the Texas Credit Title of the Finance Code.

(g) Except for add-on interest, a loan made under this section may include amounts to pay interest on the loan, and other fees, only if the loan amount conforms to this section, and provided a detailed, narrative underwriting report is prepared and filed in the loan file explaining the reasons and justifications the association relied upon to include such amounts in the loan. However, the loan shall not include amounts to pay interest on the loan, unless the association has full recourse against the borrower for repayment of the loan and the amount of the loan does not exceed 80% of the appraised value of the underlying collateral. Any amount of the loan which represents interest shall not be disbursed until earned.

§65.17. Loan Policies and Documentation.

(a) Each association shall establish written policies approved by its board of directors establishing prudent credit underwriting and loan documentation standards. Such standards must be designed to identify potential safety and soundness concerns and ensure that action is taken to address those concerns before they pose a risk to the association's capital. Credit underwriting standards should consider the nature of the markets in which loans will be made; provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial stability of any guarantor, the nature and value of underlying collateral, and the borrower's character and willingness to repay as agreed; establish a system of independent, ongoing credit review and appropriate communication to senior management and the board of directors; take adequate account of concentration of credit risk; and are appropriate to the size of the association and the scope of its lending activities. Loan documentation standards should be established and maintained to enable the association to make informed lending decisions and assess risk, as necessary, on an ongoing basis; identify the purpose of the loan and source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner; ensure that any claim against a borrower is legally enforceable; demonstrate appropriate administration and monitoring of a loan; and consider the size and complexity of a loan. The following documents are generally appropriate and can be used as a guideline for prudent lending; however, unless such documents are specifically required by other state and federal statutes or regulations, there may be alternative documents equally suitable in satisfying the safety and soundness intent of this section which the association may substitute and still address the safety and soundness concern:

(1) an application for the loan, signed by the borrower or his agent, (and if the borrower is a corporation, a board of directors resolution authorizing the loan) which discloses the purpose for which the loan is sought, the identity of the underlying collateral, and the source of funds which will be used to repay the loan;

(2) a statement signed by the borrower or his agent, or a copy of the executed contract, disclosing the actual price at which the security is being purchased by the borrower, if the loan is made for the purpose of financing purchase of the security for the loan;

(3) current financial statements signed by the borrower and all guarantors and/or current documented credit reports disclosing the financial ability of the borrower and guarantors;

(4) a loan approval sheet (which may be part of the loan application form) indicating the amount and terms of the loan, the date of loan approval, by whom approved, the signatures of the persons approving the loan, any conditions of approval, and verifying that the persons approving the loan have confirmed that applicable limitations on loans to One Borrower are met;

(5) a loan disbursement statement or other documentation, indicating the date, amount, and ultimate recipient of every disbursement of the proceeds of such loan (this requirement is not met by showing one or more disbursements to a title company or other escrow agent, but for a construction loan, this requirement may be met by documenting bona fide construction draw disbursements to the general contractor of the project, upon his completion of an affidavit stating that all bills for labor and materials have been paid as of the date of the disbursement);

(6) a loan settlement statement, indicating in detail the expenses, fees, and charges the borrower or borrowers have paid in connection with such loan;

(7) the promissory note or notes containing the borrower's obligation to repay duly executed by the borrower and all guaranty agreements duly executed by the guarantors (a copy of the note or notes may be kept in the loan file, if the original notes are stored for safekeeping in another location at the association);

(8) the original mortgage, deed of trust, or other instrument creating or constituting the lien securing the loan;

(9) for real estate loans, or oil and gas or mineral loans, an attorney's opinion letter based on an abstract of title, or a policy of title insurance, or binder of same, issued by a title company authorized to insure titles in the state in which the security for the loan is located, showing that the lien securing such loan meets the applicable requirements of this chapter for liens securing the loan in question;

(10) evidence that the insurable improvements of the real estate are insured against loss by a fire and extended coverage policy or its equivalent issued by an insurance company authorized to do business in the state in which the real estate security is located and naming the association as a co-insured, as its interest may appear;

(11) for real estate loans, an appraisal or evaluation completed in accordance with 12 C.F.R §323.1, et seq.;

(12) for personal property loans, a detailed explanation of how the association arrived at the appraised or market value of the underlying collateral;

(13) any loan agreement or other ancillary documents relating to the loan;

(14) any documents required by the Texas Credit Title of the Finance Code.

(b) Documentation guidelines for unsecured loans under this chapter would generally include the documents in subsection (a)(1) and (3) - (7) of this section.

(c) Loan documentation which meets the documentation requirements of the applicable agency meets the requirements of this section for any loan of which at least 80% of the principal is guaranteed by the United States or any agency or instrumentality thereof.

(d) An association may designate as escrow agent an attorney or a title company either of which must be duly licensed in the state where the transaction is closed. However, where an escrow agent is used, all original documents shall be forwarded to the association within five business days after closing, or immediately after recording, for those documents which require filing of record.

(e) Permanent Loan File Requirements.

(1) Loan documentation shall be in the possession of the association or an escrow agent designated by the association before funding, together with a signed certification by an officer or employee that the loan documentation was complete before funding and such documents and records shall be placed in one permanent loan file immediately upon receipt by the association.

(2) The permanent loan file required by this section shall be located at an office of the association. Duplicate loan files or other files containing loan documentation not required by this rule may be maintained at the association's discretion. Files for loans which are fully secured by accounts at the association may be maintained at the office where the loan was originated.

(3) The permanent loan file shall contain evidence that the association obtained the prompt recording in the proper records of every mortgage, deed of trust, or other instrument creating, constituting or transferring any lien securing in whole or part any loan made under this chapter, or the association's interest therein. This requirement shall not apply to loan participations purchased by the association.

(4) Where the proceeds of a loan are disbursed over the term of the loan in the form of draws by the borrower, the documentation supporting each draw shall be part of the permanent file.

(5) When an association purchases whole loans or participations in loans, it shall cause the assignment or transfer of its interest in the liens securing such loans to be in recordable form and maintained in the permanent file. If such loans are serviced by others, the servicing agreement shall be a part of the permanent file. The association shall obtain a certification from the seller of the loan or participation that the seller is in possession of all documents required by this section.

(f) The records of the association shall reflect that the board of directors has by appropriate resolution established procedures for the approval of all loans, loan commitments or letters of credit made by the association and specifically fixing the authority and responsibility for preliminary loan approval by officers and employees of the association. Loans originating in branch offices, loan offices, or agencies shall be approved in the same manner as loans originating in the principal office. The board of directors shall approve or ratify all loans, except loans secured by savings accounts of the association and loans of less than $ 10,000.

(g) An association shall maintain a register of all outstanding loan commitments, including commitments to purchase loans or participations, containing the name and address of the customer to whom the commitment is made, dollar amount of the commitment, and a summary of all material terms of the commitment, with a description of any written documents evidencing the loan commitment.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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7 TAC §65.22

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts the repeal of §65.22 in 7 TAC Chapter 65, concerning Loans and Investments, without changes to the proposal as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1588).

In general, the purpose of the repeal of the rule regarding loans and investments is to implement changes resulting from the commission's review of Chapter 65 under Texas Government Code §2001.039.

Section 65.22 is an unnecessary restriction on the business of a savings and loan association as this issue is covered in §65.11.

The department received no comments regarding the proposed repeal.

The repeal is adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks. The repeal is also adopted under Texas Finance Code §§64.001, 64.002 and 64.083, which provide that the commission may adopt rules relating to the associations' loans and investments. The repeals is also adopted under Texas Finance Code §66.002, which authorizes the commission to adopt rules regarding enforcement and regulation.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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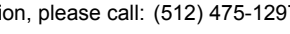

CHAPTER 67. SAVINGS AND DEPOSIT ACCOUNTS

7 TAC §§67.3, 67.6 - 67.8, 67.10 - 67.13, 67.15, 67.17

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §§67.3, 67.6 - 67.8, 67.10 - 67.13, 67.15, and 67.17 in 7 TAC Chapter 67, concerning Savings and Deposit Accounts. The amendments are adopted without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1588) and will not be republished.

In general, the purpose of the adoption regarding these rules for savings and deposit accounts is to implement changes resulting from the commission's review of Chapter 67 under Texas Government Code §2001.039.

The adopted amendments include revisions to improve clarity; corrections of grammar, punctuation, and titles; removal of an approval requirement for deposit forms; and removal of an unnecessary reference to a statute.

Section 67.3 addresses dividend computation for savings and loan associations. The adopted amendments improve clarity and grammar.

Section 67.6 addresses distributions of savings and loan earnings on other than regular accounts. The adopted amendment improves clarity.

Section 67.7 allows a savings and loan association to contract for 90-day advance notice of savings account withdrawal. The adopted amendments provide clarifying language and update terms used.

Section 67.8 describes deposits permissible for savings and loan associations beyond savings accounts. The adopted amendments update terms used and remove an approval requirement for forms.

Section 67.10 permits savings and loan associations to jointly issue capital obligations. The adopted amendment provides clarifying language.

Section 67.11 requires minimum liquidity to be maintained by savings and loan associations operating without Federal Deposit Insurance Corporation insurance. The adopted amendment revises language for enhanced clarity.

Section 67.12 permits savings and loan associations to allow withdrawal from negotiable order of withdrawal accounts. The adopted amendments correct the title of the rule, and correct grammar.

Section 67.13 is adopted to clarify applicability to all savings and loan associations and remove an unnecessary condition.

Section 67.15 permits the raising of capital for a savings and loan association through noninterest-bearing deposits. The adopted amendments remove unnecessary words and an unnecessary reference to a statute, and correct punctuation.

Section 67.17 addresses user safety at unmanned teller machines. The adopted amendments revise existing language to provide clarity.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks. The amendments are also adopted under Texas Finance Code §§64.001, 64.002, and 64.083, which provide that the commission may adopt rules relating to associations' loans and investments. The amendments are also adopted under Texas Finance Code §66.002, which authorizes the commission to adopt rules regarding enforcement and regulation.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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7 TAC §67.4, §67.14

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts the repeal of §67.4 and §67.14 in 7 TAC Chapter 67, concerning Savings and Deposit Accounts, without changes to the proposal as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1590).

In general, the purpose of the repeal of the rules regarding savings and deposit accounts is to implement changes resulting from the commission's review of Chapter 67 under Texas Government Code §2001.039.

Section 67.4 is a dated and unnecessary restriction on the business of a savings and loan association in the contemporary marketplace, which reflects increased competition for deposits and more rapid changes in market interest rates. Repeal will put savings and loan associations on a similar competitive level as other depository charters.

Section 67.14 provides a dated and unnecessary application and approval process, which puts savings and loan associations at a competitive disadvantage against other institutions competing for deposit funding and relationships. Repeal of this section will place savings and loan associations on a similar competitive level as other depository charters. Examinations will evaluate deposit account administration and existing Department enforcement authority is sufficient to address any identified deficiencies.

The department received no comments regarding the proposed repeal.

The repeals are adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks. The repeals are also adopted under Texas Finance Code §§64.001, 64.002 and 64.083, which provide that the commission may adopt rules relating to the associations' loans and investments. The repeals are also adopted under Texas Finance Code §66.002, which authorizes the commission to adopt rules regarding enforcement and regulation.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 69. REORGANIZATION, MERGER, CONSOLIDATION, ACQUISITION, AND CONVERSION

7 TAC §§69.2 - 69.11

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §§69.2 - 69.11 in 7 TAC Chapter 69, concerning Reorganization, Merger, Consolidation, Acquisition, and Conversion. The amendments are adopted without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1591) and will not be republished.

In general, the purpose of the adoption regarding these rules for reorganization, merger, consolidation, acquisition, and conversion is to implement changes resulting from the commission's review of Chapter 69 under Texas Government Code §2001.039.

The adopted amendments include clarifications and gender neutralization.

Section 69.2 describes the necessary content of a savings and loan association merger application. The adopted amendments clarify that a majority vote of the board is required for each entity involved and provide additional clarifying language.

Section 69.3 requires the Commissioner to provide application forms for a savings and loan merger and allows for an investigation of the application. The adopted amendment revises language for clarity.

Section 69.4 requires a hearing for any savings and loan merger application. The adopted amendments clarify language and make a reference to the Commissioner gender neutral.

Section 69.5 requires a savings and loan association to publish notice of any merger application hearing. The adopted amendments clarify terms used and remove unnecessary words in reference to applicable statutes.

Section 69.6 sets a decision deadline for savings and loan association merger applications. The adopted amendments make a reference to the Commissioner gender neutral, clarify that the deadline is applicable only to applications covered in this chapter, and clarify language.

Section 69.7 addresses denial and appeal processes of savings and loan merger applications. The adopted amendments clarify phrasing.

Section 69.8 provides an exemption from application for supervisory mergers of savings and loan associations. The adopted amendments remove unnecessary words and punctuation, primarily in reference to other sections of this title and applicable statutes.

Section 69.9 addresses the criteria the Commissioner may use to designate a savings and loan association merger to be a supervisory merger. The adopted amendments remove unnecessary words, clarify a reference to applicable statutes, and expand a list of federal regulators to account for changes made under federal legislation.

Section 69.10 addresses savings and loan association acquisitions of associations incorporated outside of Texas. The adopted amendments provide clarifying language and make references to the Commissioner gender neutral.

Section 69.11 addresses a savings and loan association's conversion into another charter. The adopted amendments make references to the Commissioner gender neutral, revise language for clarity, and revise references to applicable statutes.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks. The amendments are also adopted under Texas Finance Code §§64.001, 64.002, and 64.083, which provide that the commission may adopt rules relating to associations' loans and investments. The amendments are also adopted under Texas Finance Code §66.002, which authorizes the commission to adopt rules regarding enforcement and regulation.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 71. CHANGE OF CONTROL

7 TAC §§71.1 - 71.8

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §§71.1, 71.2, 71.3, 71.4, 71.5, 71.6, 71.7 and 71.8 in 7 TAC Chapter 71, concerning change of control, without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1593). The rules will not be republished.

In general, the purpose of the adoption regarding these rules for change of control is to implement changes resulting from the commission's review of Chapter 71 under Texas Government Code §2001.039.

The adopted amendments include correction of department naming and references, neutralization of gender references, updated criteria for presumption of control, clarification of information relating to lawsuits, and enhancement of the availability of a hearings process for change of control applications relating to savings and loan associations.

Section 71.1 is an introduction for this chapter, which addresses changes of control of savings and loan associations. The adopted amendment replaces an incorrect name for the Department with a reference to the Commissioner.

Section 71.2 provides definitions relevant to the change of control of a savings and loan association. The adopted amendments neutralize gender references, clarify that the subject is control of an association in any form, and add a 10% rebuttable presumption of control similar to that in effect for state savings banks and all other federally-insured banks and thrifts. Two comments from state savings bank representatives were received during a pre-comment period. Each comment was primarily concerned with the applicability of the 10% rebuttable presumption of control on state savings banks, with one questioning the need for presumed control when one party controls more than 10%, but less than 25%, of an association and another controls more than 25%. In each case, a Department representative communicated with the commenting party, explained that this section does not apply to state savings banks, and discussed further issues to the satisfaction of the individual. In each case, the comments were withdrawn.

Section 71.3 addresses the acquisition of a savings and loan association. The adopted amendments remove unnecessary words in reference to another section of this title, clarify information needing regarding lawsuits, and correct the name of the Department.

Section 71.4 addresses hearings for change of control applications of savings and loan associations. The adopted amendments provide an option for the Commissioner to require a hearing on a change of control application and extend the deadline for an applicant to file a petition to request a hearing on a denied application.

Section 71.5 addresses retention of control of a savings and loan association. The adopted amendments make reference to the Commissioner gender neutral.

Section 71.6 addresses the application for acquisition of a savings and loan association. The adopted amendment removes extra words in reference to the name of the Department.

Section 71.7 addresses abeyance of other application while a change of control application is in progress for a savings and loan association. The adopted amendment removes unnecessary words in reference to an association.

Section 71.8 addresses transactions which are exempt from the provisions of this chapter. The adopted amendments clarify the applicability of this section and remove unnecessary words in reference to the name of the Department.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks. The amendments are also adopted under Texas Finance Code §§64.001, 64.002 and 64.083, which provide that the commission may adopt rules relating to associations' loans and investments. The amendments are also adopted under Texas Finance Code §66.002, which authorizes the commission to adopt rules regarding enforcement and regulation.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 73. SUBSIDIARY CORPORATIONS

7 TAC §§73.1 - 73.4, 73.6

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §§73.1 - 73.4 and 73.6 in 7 TAC Chapter 73, concerning Subsidiary Corporations. The amendments are adopted without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1596) and will not be republished.

In general, the purpose of the adoption regarding these rules for subsidiary corporations is to implement changes resulting from the commission's review of Chapter 73 under Texas Government Code §2001.039.

The adopted amendments include gender neutralization of references to the Commissioner, removal of unnecessary words, correction of the Department name, and clarifying language.

Section 73.1 addresses subsidiaries of savings and loan associations. The adopted amendments make references to the Commissioner gender neutral and provide clarifying language.

Section 73.2 addresses applications for savings and loan association subsidiaries. The adopted amendments remove unnecessary words, update terms used to agree with other titles, and correct the name of the Department.

Section 73.3 addresses permissible activities for subsidiaries of savings and loan associations. The adopted amendments clarify that indirect ownership is covered and remove an unnecessary word.

Section 73.4 addresses savings and loan association subsidiary operations. The adopted amendments clarify language relating to required fidelity bond coverage and make a reference to the Commissioner gender neutral.

Section 73.6 addresses operating subsidiaries of savings and loan associations. The adopted amendment removes unnecessary words in reference to other sections of this title.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks. The amendments are also adopted under Texas Finance Code §§64.001, 64.002, and 64.083, which provide that the commission may adopt rules relating to associations' loans and investments. The amendments are also adopted under Texas

Finance Code §66.002, which authorizes the commission to adopt rules regarding enforcement and regulation.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 75. APPLICATIONS
SUBCHAPTER A. CHARTER APPLICATIONS

7 TAC §§75.1 - 75.3, 75.5, 75.6, 75.10

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §§75.1 - 75.3, 75.5, 75.6, and 75.10 in 7 TAC Chapter 75, Subchapter A, concerning charter applications regarding savings banks, without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1597). The rules will not be republished.

In general, the purpose of the adoption regarding these rules for chapter applications is to implement changes resulting from the commission's review of Chapter 75 under Texas Government Code §2001.039.

The adopted amendments include the gender neutralization of references to the Commissioner, and a streamlining of the charter application process making hearings contingent on receipt of protest to the application.

Section 75.1 addresses applications to organize a state savings bank. The adopted amendments make references to the Commissioner gender neutral and update an accounting term.

Section 75.2 deals with hearings on charter applications for state savings banks. The adopted amendments streamline the application process by requiring a hearing only when protest is received, similar to processes in place for other types of charters. Additional amendments make references to the Commissioner gender neutral.

Section 75.3 addresses the public notice of a state savings bank charter application. The adopted amendments streamline the application process by tying the publication to the application rather than a hearing, which may not be required as adopted in the amendments to §75.2. An additional amendment clarifies that, when this section is applied to other types of applications, publication must occur in the home office area of the state savings bank and in the area of each proposed branch office.

Section 75.5 addresses the proof of publication of a state savings bank charter application as required by §75.3. The adopted amendments again streamline the application process by tying the publication to the application rather than a hearing, which may not be required as adopted in the amendments to §75.2, and remove unnecessary words in reference to another section of this title.

Section 75.6 addresses the deadline for a state savings bank charter application decision. The adopted amendments streamline the application process by tying the decision to the application rather than a hearing, which may not be required as adopted in the amendments to §75.2, and remove unnecessary words in reference to another section of this title.

Section 75.10 addresses the approval process for a state savings bank to change its name. The adopted amendment makes a reference to the Commissioner gender neutral.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks, and §96.002, which authorizes the commission to adopt rules necessary to supervise and regulate savings banks. The amendments are also adopted under Texas Finance Code §94.253, which provides that the commission may adopt rules regarding investments in equity securities, and §97.001, which provides that the commission may adopt rules regarding holding companies.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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7 TAC §75.4

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts the repeal of §75.4 in 7 TAC Chapter 75, Subchapter A, concerning Charter Applications, without changes to the proposal as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1599).

In general, the purpose of the repeal of the rules regarding charter applications is to implement changes resulting from the commission's review of Chapter 75 under Texas Government Code §2001.039.

Section 75.4 is redundant with the existing and applicable statute, Texas Finance Code §91.004. Repeal removes the possibility of conflicts between the regulation and statute.

The department received no comments regarding the proposed repeal.

The repeal is adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks and §96.002, which authorizes the commission to adopt rules necessary to supervise and regulate savings banks. The repeal is also adopted under

Texas Finance Code §94.253 which provides that the commission may adopt rules regarding investments in equity securities and §97.001, which provides that the commission may adopt rules regarding holding companies.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. ADDITIONAL OFFICES

7 TAC §§75.33, 75.35, 75.36, 75.38, 75.41

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §§75.33, 75.35, 75.36, 75.38, and 75.41 in 7 TAC Chapter 75, Subchapter C, concerning additional offices, without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1599). The rules will not be republished.

In general, the purpose of the adoption regarding these rules for additional offices is to implement changes resulting from the commission's review of Chapter 75 under Texas Government Code §2001.039.

The adopted amendments include the gender neutralization of references to the Commissioner, an update on one accounting term, and the elimination of duplicative text.

Section 75.33 addresses state savings bank branch applications. The adopted amendment replaces a gender-specific reference to the Commissioner with a reference to the Department.

Section 75.35 addresses applications for state savings bank mobile facilities. The adopted amendments make references to the Commissioner gender neutral.

Section 75.36 addresses the designation of a state savings bank purchase of assets or offices to qualify as a supervisory sale. The adopted amendment updates one accounting term from "net worth" to "capital."

Section 75.38 addresses location changes for state savings bank offices. The adopted amendments make references to the Commissioner gender neutral.

Section 75.41 addresses the application process for a state savings bank to establish an office outside of Texas. The adopted amendments make references to the Commissioner gender neutral and remove the duplication of text.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks and §96.002, which authorizes the commission to adopt rules necessary to supervise and regulate savings banks. The amendments are also adopted under Texas Finance Code §94.253 which provides that the commission may adopt rules regarding investments in equity securities and §97.001, which provides that the commission may adopt rules regarding holding companies.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. REORGANIZATION, MERGER, CONSOLIDATION, CONVERSION, PURCHASE, AND ASSUMPTION AND ACQUISITION

7 TAC §§75.83 - 75.88, 75.90, 75.91

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §§75.83, 75.84, 75.85, 75.86, 75.87, 75.88, 75.90 and 75.91 in 7 TAC Chapter 75, Subchapter D concerning reorganization, merger, consolidation, conversion, purchase and assumption and acquisition, without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1601). The rules will not be republished.

In general, the purpose of the adoption regarding these rules for reorganization, merger, consolidation, conversion, purchase, and assumption and acquisition is to implement changes resulting from the commission's review of Chapter 75 under Texas Government Code §2001.039.

The adopted amendments include the standardization of hearing and application processes across application types, gender neutralization of references to the Commissioner, clarifications in language and titles, and updates in terminology.

Section 75.83 addresses the notice and hearing requirements for merger and similar applications of state savings banks. The adopted amendments standardize hearing and application processes by referring to requirements set forth in other sections of this title.

Section 75.84 addresses the publication requirement for merger and similar applications of state savings banks. The adopted amendments standardize application processes by referring to requirements set forth in other sections of this title, also removing the attached graphic included with the section.

Section 75.85 addresses the decision period for merger and similar applications of state savings banks. The adopted amendments make a reference to the Commissioner gender neutral

and standardize application processes by referring to requirement set forth in other sections of this title.

Section 75.86 addresses the appeal process for merger and similar applications of state savings banks. The adopted amendment clarifies a reference to applicable statutes.

Section 75.87 addresses the criteria for qualifying a merger or similar transaction of a state savings bank to be a supervisory merger. The adopted amendment updates an accounting term by replacing "net worth" with "capital."

Section 75.88 addresses state savings bank acquisitions involving financial institutions outside of Texas. The adopted amendments correct the rule title and make references to the Commissioner gender neutral.

Section 75.91 addresses the conversion of a state savings bank from a mutual to stock form of organization. The adopted amendment updates terms used.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks, and §96.002, which authorizes the commission to adopt rules necessary to supervise and regulate savings banks. The amendments are also adopted under Texas Finance Code §94.253 which provides that the commission may adopt rules regarding investments in equity securities, and §97.001, which provides that the commission may adopt rules regarding holding companies.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. CHANGE OF CONTROL

7 TAC §§75.121 - 75.124

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §§75.121 - 75.124 in 7 TAC Chapter 75, Subchapter E, concerning change of control, without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1602). The rules will not be republished.

In general, the purpose of the adoption regarding these rules for change of control is to implement changes resulting from the commission's review of Chapter 75 under Texas Government Code §2001.039.

The adopted amendments are limited to gender neutralization.

Section 75.121 provides definitions relating to state savings bank change of control applications. The adopted amendments neutralize gender references.

Section 75.122 addresses the acquisition of a state savings bank. The adopted amendments make references to the Commissioner gender neutral.

Section 75.123 addresses hearings for state savings bank change of control applications. The adopted amendments make references to the Commissioner gender neutral.

Section 75.124 addresses retention of control of a state savings bank. The adopted amendments make references to the Commissioner gender neutral.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks, and §96.002, which authorizes the commission to adopt rules necessary to supervise and regulate savings banks. The amendments are also adopted under Texas Finance Code §94.253 which provides that the commission may adopt rules regarding investments in equity securities, and §97.001, which provides that the commission may adopt rules regarding holding companies.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 76. MISCELLANEOUS

SUBCHAPTER A. BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS AND RESERVES

7 TAC §§76.1, 76.3, 76.4, 76.6, 76.12

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §§76.1, 76.3, 76.4, 76.6 and 76.12 in 7 TAC Chapter 76, Subchapter A concerning books, records, accounting practices, financial statements and reserves, without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1604). The rules will not be republished.

In general, the purpose of the adoption regarding these rules for books, records, accounting practices, financial statements and reserves is to implement changes resulting from the commission's review of Chapter 76 under Texas Government Code §2001.039.

The adopted amendments include clarification of the permissibility of electronic records, updated requirements for annual financial audits and the treatment of bad debts, and updated statutory references related to the bylaws of state savings banks.

Section 76.1 addresses the proper maintenance of state savings bank books and records. The adopted amendments reflect current, prudent practices by explicitly permitting offsite electronic duplicate records.

Section 76.3 allows the reproduction of destroyed state savings bank records from copies in various permissible forms. The adopted amendment updates those forms to explicitly include electronic records.

Section 76.4 sets requirements for annual financial audits for state savings banks. The adopted amendments clarify the standards for those audits and related correspondence.

Section 76.6 describes appropriate accounting for charge-offs of, and reserves for, bad debts. The adopted amendment replaces specific guidance with a reference to the requirements of Generally Accepted Accounting Principles (GAAP).

Section 76.12 addresses bylaws of state savings banks. The adopted amendment updates references to applicable statutes and removes unnecessary words.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks and §96.002, which authorizes the commission to adopt rules necessary to supervise and regulate savings banks. The amendments are also adopted under Texas Finance Code §94.253, which provides that the commission may adopt rules regarding investments in equity securities and §97.001, which provides that the commission may adopt rules regarding holding companies.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Proposal publication date: March 4, 2016
For further information, please call: (512) 475-1297

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SUBCHAPTER B. CAPITAL AND CAPITAL OBLIGATIONS

7 TAC §76.21, §76.22

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §76.21 and §76.22 in 7 TAC Chapter 76, Subchapter B, concerning capital and capital obligations, without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1605). The rules will not be republished.

In general, the purpose of the adoption regarding these rules for capital and capital obligations is to implement changes resulting from the commission's review of Chapter 76 under Texas Government Code §2001.039.

The adopted amendments include updates of capital definitions consistent with prevailing accounting guidance and replacement of terms to clarify the applicability of this subchapter to state savings banks.

Section 76.21 describes minimum capital requirements for state savings banks. The adopted amendments update capital definitions for consistency with accounting principles and clarify the applicability to state savings banks.

Section 76.22 permits the Commissioner to increase or decrease minimum capital requirements for state savings banks. The adopted amendments clarify the applicability of this section to state savings banks, update one accounting term by replacing "net worth" with "capital," and remove unnecessary words in reference to another section of this title.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks and §96.002, which authorizes the commission to adopt rules necessary to supervise and regulate savings banks. The amendments are also adopted under Texas Finance Code §94.253, which provides that the commission may adopt rules regarding investments in equity securities and §97.001, which provides that the commission may adopt rules regarding holding companies.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Ernest C. Garcia
General Counsel
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SUBCHAPTER E. HEARINGS

7 TAC §76.71

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §76.71 in 7 TAC Chapter 76, Subchapter E, concerning hearings, without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1606). The rule will not be republished.

In general, the purpose of the adoption regarding these rules for hearings is to implement changes resulting from the commission's review of Chapter 76 under Texas Government Code §2001.039.

Section 76.71 addresses the use of a hearings officer for state savings bank matters. The adopted amendments eliminate unnecessary words in reference to applicable statutes and correct agency names.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks and §96.002, which authorizes the commission to adopt rules necessary to supervise and regulate savings banks. The amendments are also adopted under Texas Finance Code §94.253, which provides that the commission may adopt rules regarding investments in equity securities and §97.001, which provides that the commission may adopt rules regarding holding companies.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. FEES AND CHARGES

7 TAC §§76.95, 76.98, 76.99, 76.108

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §§76.95, 76.98, 76.99 and 76.108 in 7 TAC Chapter 76, Subchapter F, concerning fees and charges, without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1607). The rules will not be republished.

In general, the purpose of the adoption regarding these rules for fees and charges is to implement changes resulting from the commission's review of Chapter 76 under Texas Government Code §2001.039.

The adopted amendments include clarifying language and a replacement of public information fees with reference to those set by the Texas Attorney General.

Section 76.95 sets the fee for special examinations or audits of state savings banks. The adopted amendments provide clarifying language.

Section 76.98 describes the annual assessment fee required for a state savings bank to do business in Texas. The adopted amendments provide clarifying language.

Section 76.99 sets the fees for a state savings bank to reorganize, merge, and/or consolidate. The adopted amendments provide clarifying language and remove unnecessary words in reference to other sections of this title.

Section 76.108 sets fees for public information requests relating to Department records of state savings banks. The adopted amendments replace specific fees with reference to the fees adopted by rules of the Texas Attorney General.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks and §96.002, which authorizes the commission to adopt rules necessary to supervise and regulate savings banks. The amendments are also adopted under Texas Finance Code §94.253, which provides that the commission may adopt rules regarding investments in equity securities and §97.001, which provides that the commission may adopt rules regarding holding companies.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Ernest C. Garcia
General Counsel
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For further information, please call: (512) 475-1297

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SUBCHAPTER H. CONSUMER COMPLAINT PROCEDURES

7 TAC §76.122

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §76.122 in 7 TAC Chapter 76, Subchapter H, concerning consumer complaint procedures, with changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1608). The rule is republished.

In general, the purpose of the adoption regarding these rules for consumer complaint procedures is to implement changes resulting from the commission's review of Chapter 76 under Texas Government Code §2001.039.

Section 76.122 addresses consumer complaint procedures relating to state savings banks. The proposed amendment would have corrected the name of the Department and have replaced specific contact information with reference to the Department's website. An intra-agency comment was received leading to further discussion on the amendment to this rule. As a result the Department yielded to suggestions introduced by the commentator and subsequently modified and adopts the rule's language to retain the original wording with the only exceptions being a change in the consumer complaint fax number and the corrected name of the Department.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks

and §96.002, which authorizes the commission to adopt rules necessary to supervise and regulate savings banks. The amendments are also adopted under Texas Finance Code §94.253, which provides that the commission may adopt rules regarding investments in equity securities and §97.001, which provides that the commission may adopt rules regarding holding companies.

§76.122. Consumer Complaint Procedures.

(a) Definitions.

(1) "Privacy notice" means any notice which a state savings bank gives regarding a consumer's right to privacy, regardless of whether it is required by a specific state or federal law or given voluntarily.

(2) "Required notice" means a notice in a form set forth or provided for in subsection (b)(1) of this section.

(b) Notice of how to file complaints.

(1) In order to let its consumers know how to file complaints, state savings banks must use the following notice: The (name of state savings bank) is chartered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Department of Savings and Mortgage Lending. Any consumer wishing to file a complaint against the (name of state savings bank) should contact the Department of Savings and Mortgage Lending through one of the means indicated below: In Person or by U.S. Mail: 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, Telephone No.: (877) 276-5550, Fax No.: (512) 936-2003, or via electronic submission on the Department's website at http://www.sml.texas.gov/consumerinformation/tdsml_consumer_complaints.html.

(2) A required notice must be included in each privacy notice that a state savings bank sends out.

(3) Regardless of whether a state savings bank is required by any state or federal law to give privacy notices, each state savings bank must take appropriate steps to let its consumers know how to file complaints by giving them the required notice in compliance with paragraph (1) of this subsection.

(4) The following measures are deemed to be appropriate steps to give the required notice:

(A) In each area where a state savings bank conducts business on a face-to-face basis, the required notice, in the form specified in paragraph (1) of this subsection, must be conspicuously posted. A notice is deemed to be conspicuously posted if a customer with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.) are posted.

(B) For customers who are not given privacy notices, the state savings bank must give the required notice when the customer relationship is established.

(C) If a state savings bank maintains a website, the required notice must be included in a screen which the consumer must view whenever the site is accessed.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Ernest C. Garcia
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CHAPTER 77. LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS

SUBCHAPTER A. AUTHORIZED LOANS AND INVESTMENTS

7 TAC §§77.2, 77.4, 77.5, 77.8, 77.31, 77.33, 77.35, 77.51, 77.71, 77.91, 77.94

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §§77.2, 77.4, 77.5, 77.8, 77.31, 77.33, 77.35, 77.51, 77.71, 77.91, and 77.94 in 7 TAC Chapter 77, Subchapter A, concerning authorized loans and investments, without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1609). The rules will not be republished.

In general, the purpose of the adoption regarding these rules for authorized loans and investments is to implement changes resulting from the commission's review of Chapter 77 under Texas Government Code §2001.039.

The adopted amendments include clarified language, enhanced consistency with federal regulations, updated federal agency references, and the neutralization of gender references.

Section 77.2 addresses limitations on loans to One Borrower from a state savings bank. The adopted amendment capitalizes "One Borrower" to clarify the use of a defined term.

Section 77.4 addresses requirements for home improvement loans made by state savings banks. The adopted amendments replace dated appraisal requirements with those in effect for federally-supervised institutions and clarify a statutory reference.

Section 77.5 addresses requirements for manufactured home loans made by state savings banks. The adopted amendments replace dated appraisal requirements with those in effect for federally-supervised institutions.

Section 77.8 addresses requirements for personal property loans made by state savings banks. The adopted amendment clarifies a statutory reference.

Section 77.31 addresses general loan policies and documentation for state savings banks. The adopted amendments provide clarifying terms, language, and capitalization; make gender references neutral; replace dated appraisal requirements with those in effect for federally-supervised institutions; and remove dated federal agency references.

Section 77.33 addresses loans made by state savings banks to insiders and affiliates. The adopted amendment enhances consistency with federal regulations.

Section 77.35 establishes definitions for use in this chapter. The adopted amendments make gender references neutral and re-style one term for clarity.

Section 77.51 addresses letters of credit issued by state savings banks. The adopted amendment clarifies the applicability of limits on loans to One Borrower.

Section 77.71 addresses state savings bank security investments. The adopted amendments update federal agency references.

Section 77.91 addresses state savings bank subsidiary investments. The adopted amendments make references to the Commissioner gender neutral.

Section 77.94 addresses operations of state savings bank subsidiaries. The adopted amendments provide clarifying language and that which may be conflicting.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks and §96.002, which authorizes the commission to adopt rules necessary to supervise and regulate savings banks. The amendments are also adopted under Texas Finance Code §94.253 which provides that the commission may adopt rules regarding investments in equity securities and §97.001, which provides that the commission may adopt rules regarding holding companies.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Ernest C. Garcia
General Counsel
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For further information, please call: (512) 475-1297

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SUBCHAPTER B. SAVINGS AND DEPOSITS

7 TAC §77.116

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts amendments to §77.116 in 7 TAC Chapter 77, Subchapter B, concerning savings and deposits, without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1613). The rule not be republished.

In general, the purpose of the adoption regarding these rules for savings and deposits is to implement changes resulting from the commission's review of Chapter 77 under Texas Government Code §2001.039.

Section 77.116 addresses the pledging of state savings bank assets to secure deposits. The adopted amendments make state savings bank powers consistent with those of other types of charters.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Texas Finance Code §11.302, which authorizes the commission to adopt rules applicable to state savings associations or to savings banks and §96.002, which authorizes the commission to adopt rules necessary to supervise and regulate savings banks. The amendments are also adopted under Texas Finance Code §94.253 which provides that the commission may adopt rules regarding investments in equity securities and §97.001, which provides that the commission may adopt rules regarding holding companies.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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General Counsel
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For further information, please call: (512) 475-1297

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

The Finance Commission of Texas (commission) adopts amendments, new rules, and repeals in 7 TAC, Chapter 84, concerning Motor Vehicle Installment Sales. The commission adopts amendments to §§84.102, 84.201, 84.203, 84.601, 84.602, 84.605, 84.607, 84.610, 84.611, 84.708, 84.709, 84.804, 84.808, and 84.809; the repeal of §§84.205, 84.604, 84.613, and 84.614; and new §§84.205, 84.309, 84.604, and 84.613.

The adopted changes affect rules contained in Subchapter A, concerning General Provisions; Subchapter B, concerning Retail Installment Contract; Subchapter C, concerning Insurance and Debt Cancellation Agreements; Subchapter F, concerning Licensing; Subchapter G, concerning Examinations; and Subchapter H, concerning Retail Installment Sales Contract Provisions.

The commission adopts the amendments to §§84.102, 84.201, 84.601, 84.602, 84.605, 84.607, 84.610, 84.708, 84.709, 84.804, 84.808, and 84.809; the repeal of §§84.205, 84.604, 84.613, and 84.614; and new §84.309 and §84.604, without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1613).

The commission adopts the amendments to §84.203 and §84.611; and adopts new §84.205 and §84.613 with changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1613). These changes are being made in order to provide additional clarification and address the official comments received, as discussed in the following paragraph.

The commission received two written comments on the proposal from the American Financial Services Association (AFSA) and the Texas Automobile Dealers Association (TADA).

The AFSA comment requests clarification regarding the proposed amendments in §84.203 and §84.611(e). First, regarding deferment charges in §84.203, the AFSA comment requests additional guidance relating to the definition of and calculation of a deferment charge. Second, the AFSA comment also requests clarification on the proposed amendments to §84.611(e), specifically concerning the definition of retail installment contracts "serviced" and the calculation of dollar volume of contracts. Third, the AFSA comment included suggestions for the model contract in §84.809(b). The AFSA comment does not address the other rule changes included in the proposal.

The TADA comment solely relates to new §84.205, Documentary Fee (repeal and replace), and supports the proposed increase in the amount that does not require a cost analysis from $125 to $150. The comment provides recommendations regarding four issues contained in the documentary fee rule as proposed (outlined in the next paragraph), but is silent with respect to the other changes included in the proposal.

The TADA comment offers suggestions related to the following four documentary fee issues: 1) form for notification (§84.205(c)(3)); 2) facilities costs (§84.205(d)(3)(B)(v)); 3) depreciation (§84.205(d)(3)(B)(v)); and 4) commission employee compensation (§84.205(d)(3)(B)(i)(I)).

The commission's responses to the official comments received are included after the purpose discussions following each respective rule provision receiving comments.

In general, the purpose of this rule adoption regarding 7 TAC, Chapter 84 is to implement changes resulting from the commission's review of this chapter under Texas Government Code, §2001.039. The notice of intention to review 7 TAC Chapter 84 was published in the January 15, 2016, issue of the *Texas Register* (41 TexReg 637). The commission received no comments in response to that notice.

The adopted rule changes relate to the following issues: deferment charges and time price differential, documentary fees, debt cancellation agreements, licensing processes and annual renewal statement, and technical corrections. Additionally, §§84.205, 84.604, and 84.613 have been repealed in order to replace them with new, reorganized rules.

The agency circulated an early draft of proposed changes to interested stakeholders. The agency then held a stakeholders meeting where attendees provided oral precomments. In addition, the agency received two informal written precomments. Certain concepts recommended by the precommenters were incorporated into the proposal, and the agency appreciates the thoughtful input provided by stakeholders.

The individual purposes of the amendments, new rules, and repeals are provided in the following paragraphs.

I. Deferment charges and time price differential

An amendment to §84.102 clarifies the definition of "deferment charge" to remove the phrase "The payment of an additional."

Adopted amendments throughout §84.201 provide updated internal references and citations. Additionally, in Figure §84.201(d)(2)(B)(iii), an amendment will correct a typographical error. For 61 months and $15.00 add-on rates per $100, the figure's current rate of 26.6341% will be replaced by the correct rate of 24.6341%.

The adoption includes several amendments to §84.203, which relates to deferment charges. In general, the purpose of these amendments is to clarify the requirements for calculating and charging deferment charges, which are authorized under Texas Finance Code, §348.114. In particular, the amendments clarify the requirements for transactions using the true daily earnings method.

An amendment to subsection (a) of §84.203 clarifies the definition of "deferment charge" to remove the phrase "the payment of an additional." The adoption removes a sentence from subsection (a) to conform to amendments to subsection (d)(3).

Regarding §84.203(a), the official AFSA comment states that "the proposed amendments to the definition do not adequately identify what constitutes a deferment." The current rule text, which this adoption does not change, states that a deferment charge is a "charge to defer the payment date of a scheduled payment or partial payment on a contract. . . . This section applies only to an amendment relating to the deferment of all or part of one or more installments, and does not apply to amendments relating to renewing, restating, or rescheduling the unpaid balance under a retail installment sales contract." The commission believes that this text is sufficient to specify what constitutes a deferment. For this reason, the commission declines to provide further modifications to the rule in response to the commenter's suggestion.

In the amendments to subsection (b), the rule's former requirement to provide a deferment notice to the buyer has been replaced with a requirement to provide the buyer with a copy of the written deferment agreement. Paragraph (1) describes the elements that must be included in the deferment agreement. These requirements are based on Texas Finance Code, §348.116, which provides that an amendment to a retail installment contract must be confirmed in a writing signed by the buyer, and that the holder must deliver a copy of the confirmation to the buyer. Regarding the requirement to have a signed deferment agreement, one precommenter asked whether the agency would continue to follow a policy that the commission articulated in the 2008 preamble to the original adoption of §84.203. In that preamble, the commission stated: "There are certain fact situations where a signature would not be required. For example, if the holder does not change the payment amount and does not impose a charge for the deferment." 33 TexReg 8915 (2008). The agency will continue to follow this policy after the adoption of these amendments.

The adoption deletes current subsection (c), which deals with the content of the deferment notice, because the adoption replaces this provision with a requirement to provide a deferment agreement containing similar information in subsection (b). Subsection (d) of the adoption amends the guidelines for computing the deferment charge in order to provide additional clarity. For example, amendments to paragraphs (1)(A)(i)(II) and (2)(A)(i)(II) specify that the holder may charge a deferment charge that is lower than the maximum. Also, amendments to paragraphs (1)(D) and (2)(D) describe requirements for the application of payments. New paragraph (3) describes how the deferment charge should be calculated for a transaction using the true daily earnings method. This provision explains that all time price differential that will accrue on the deferred installments during the deferment period must be included in the base deferment charge.

The official AFSA comment states that "the proposed amendments to the definition do not adequately identify . . . whether a finance charge will now be considered a deferment charge for the purposes of the new rules. Accordingly, AFSA requests clarification on the treatment of the finance charge on a deferred payment as a deferment charge." Licensees may use three different methods for calculating time price differential (i.e., finance charge): the add-on method, the scheduled installment earnings method, and the true daily earnings method. In response to this comment, new paragraphs (1)(E) and (2)(E) have been added to subsection (d), explaining that for contracts using the add-on method or scheduled installment earnings method, the deferment charge does not include time price differential. As proposed, paragraph (3)(D) already described the portion of the time price differential that is included in the deferment charge for contracts using the true daily earnings method.

The adoption deletes current subsections (f) and (g), dealing with accrual of time price differential and accounting of payments, because the adoption replaces these provisions with amended provisions in subsection (d). The adoption adds a new subsection (f) explaining that a holder may not make a false, misleading, or deceptive representation relating to a deferment charge. For example, a holder may not make an offer to the retail buyer such as "Payment Holiday--Pay Only $25" if the total deferment charge exceeds $25.

The official AFSA comment states: "AFSA also requests additional guidance from the OCCC regarding calculation of the deferment charge in order to provide financial institutions with greater clarity." The commission believes that the rule provides sufficient guidance on how holders can charge a deferment charge in compliance with Texas Finance Code, §348.114. For this reason, the commission declines to add further guidance in the text of the rule. If further guidance is necessary, the OCCC may issue an advisory bulletin on this issue.

The official AFSA comment states: "Additionally, AFSA respectfully requests that the OCCC consider the potential negative impact of the proposed deferment charge restrictions on creditors and consumers. Deferments are available to consumers at the discretion of creditors; accordingly, creditors may opt to discontinue the practice if the proposed rules create an excessive administrative burden. Without available deferments, the end result for consumers may be accelerated remedial action." The commission is unaware of how the amendments would create a negative impact on creditors or consumers. The amendments will result only in minor changes (if any) to how holders presently impose deferment charges, compared to the previous version of the rule. Any changes are necessary to ensure that holders comply with Texas Finance Code, §348.114.

II. Documentary fees

Section 84.205, which relates to documentary fees, has been repealed and replaced with a new rule. The previous version of §84.205 described the requirements for filing a written notification of an increased documentary fee under Texas Finance Code, §348.006, and described the criteria that the Office of Consumer Credit Commissioner (OCCC) uses to determine whether a documentary fee is reasonable. The new rule largely maintains the former rule's requirements, but it includes new provisions relating mainly to three issues. First, it raises the documentary fee amount that does not require a cost analysis from $125 to $150. Second, it codifies several concepts that the OCCC has used in accepting notifications of documentary fees and in reviewing cost analyses. Third, it specifies the format of the cost analysis, in order to help streamline the OCCC's process of reviewing documentary fees.

Subsection (a) describes the purpose of the new section, including a reference to the documentary fee provisions of Texas Finance Code, §348.006. Subsection (b) describes the rule's general requirements, explaining that: (1) for a documentary fee of $50 or less, no notification or cost analysis is required; (2) for a documentary fee over $50, up to $150, a notification is required, but a cost analysis is not required; and (3) for a documentary fee over $150, both a notification and a cost analysis are required. The current documentary fee rule at §84.205(e)(3) allows a seller to file a documentary fee up to $125 without providing a cost analysis. The commission adopted the original rule with the $125 amount in 2010. The agency believes that this is an appropriate time to revisit the $125 amount and increase it to $150, primarily for two reasons. First, the agency's ongoing review of documentary fee cost analyses has indicated that a large portion of sellers can support a fee of $150 as being reasonable. Second, since 2010, several document-related costs for Texas motor vehicle dealerships have increased. Based on these factors, as well as a comparison of maximum documentary fee amounts in other states, the OCCC believes that $150 is an appropriate amount that sellers can file without providing a supporting cost analysis.

Subsection (c) describes the requirements for the written notification that sellers must provide to the OCCC before charging a documentary fee greater than $50. Paragraph (2) explains that a seller must provide a notification for each licensed location or registered office at which motor vehicles are sold. Paragraph (3) explains that the notification must be provided on a form prescribed by the OCCC.

One precommenter expressed concern that a separate submission would be required for each licensed location or registered office. The current procedure for submitting documentary fee notifications already allows sellers to submit a single spreadsheet listing multiple locations. As the OCCC develops an updated from for providing the notification, the agency will be mindful of this concern.

The official TADA comment states: "At the February 3, 2016 meeting, TADA discussed its concern regarding mandating that a specific form be required when notifying the agency of a documentary fee amount." The commenter concludes with the following: "Although a prescribed form for notification is useful, the mandating of a prescribed form is not included in the statute and TADA requests that the proposal be modified so that notification 'may' be on a prescribed form."

The OCCC believes that a standardized form is appropriate and necessary to ensure that filings are correctly processed, and to enable the agency to comply with its statutory responsibility under Texas Finance Code, §348.006 to accept documentary fee notifications. As the Texas Supreme Court stated, "[w]hen a statute expressly authorizes an agency to regulate an industry, it implies the authority to promulgate rules and regulations necessary to accomplish that purpose." *Pruett v. Harris Cty. Bail Bond Bd.,* 249 S.W.3d 447, 453 (Tex. 2008).

The OCCC already directs sellers to submit standardized documentary fee filings online. The OCCC's upcoming system for online documentary fee submissions will be more streamlined. It will allow a licensee to make a documentary fee filing by logging in and providing the following information: (1) the amount of the documentary fee, (2) a contact name, (2) a contact e-mail ad-

dress, (3) a contact phone number, and (4) the implementation date. The new system will offer direct and immediate feedback to sellers. It will be a superior method for sellers to submit documentary fee notifications. Without a standardized process for submitting notifications, dealers and the agency run a great risk of not being able to demonstrate compliance with the statute.

If a seller sends a written notification to the OCCC on an improper form and makes a bona fide effort to communicate its documentary fee amount to the OCCC, the OCCC can exercise its discretion and determine whether the attempted communication constitutes the equivalent of a filing. Thus, the commission declines to adopt the commenter's suggestion and maintains §84.205(c)(3) as proposed.

Paragraph (4) describes the requirements for filing a documentary fee notice upon a transfer of ownership between businesses. The new rule requires the transferee to file a documentary fee notification no later than the 30th calendar day following the transfer of ownership if it intends to charge a documentary fee greater than $50. Regarding this requirement, one precommenter stated: "[W]e have seen a number of sophisticated dealership operators simply forget about the documentary fee notice when applying for a transfer or new MVSF because they believed that the ALECS application system was comprehensive. . . . We would recommend including in 84.205(c)(4) a requirement that the OCCC include in the application for a MVSF license a section to provide notice of a documentary fee increase." As the OCCC amends its internal processes and the content of its online license applications, the agency will ensure that the Chapter 348 license application includes a reminder to file a documentary fee notification if the applicant intends to charge a documentary fee over $50. The agency believes that this reminder in the license application will address the precommenter's concern, and that additional language on this issue in paragraph (4) is unnecessary.

Paragraphs (6) and (7) describe the OCCC's authority to order restitution or order the seller to lower its documentary fee if the seller fails to provide a written notification. In particular, paragraph (6)(B) explains that the OCCC may order the seller to lower its documentary fee prospectively. One precommenter asked for the phrase "for a specified period of time" to be added to the end of this provision. While a specified period might be appropriate in some situations, it might not be appropriate in others. For example, if a seller filed a $100 documentary fee and charged $150, then the OCCC might order the seller to cease charging a documentary fee greater than $100. Depending on the circumstances of the violation, it might not be feasible for the order to state a specified period of time (e.g., six months). For this reason, the adoption does not include this suggested phrase.

One precommenter asked whether the OCCC would continue entering agreed orders for administrative penalties as an alternative to restitution for failure to provide a documentary fee notification. Along the same lines, one precommenter stated: "We would also recommend that the OCCC be limited to an administrative penalty upon the finding that a dealer increased the documentary fee to the safe harbor amount without providing notice to the agency and limiting the restitution amount to the difference between the fee charged in excess of safe harbor amount of $150. Requiring dealerships to make restitution of up to $100 per customer for simply failing to send a single email to the OCCC is an unnecessarily harsh and punitive measure for a mere administrative violation. For many dealerships, such a restitution order could result in layoffs or the closure of the dealership for nothing more than inadvertence."

In addition, the official TADA comment observes the following regarding restitution: "the potential penalty is substantial for a failure to provide notice, i.e., restitution and an order to lower the documentary fee." (footnote omitted).

The commission believes that the rule's restitution provisions are appropriate. In certain cases where sellers failed to provide a documentary fee notification, the OCCC has entered agreed orders in which the OCCC and the seller agreed that the seller would pay an administrative penalty as an alternative to restitution. Typically, these have been cases where the seller charged a documentary fee of $125 or less, and providing restitution down to $50 would have imposed a substantial financial hardship on the seller. Under Texas Finance Code, §14.252(c), in determining the amount of an administrative penalty, the OCCC can consider the seriousness and nature of the violation, the extent of harm to third parties, and the amount necessary to deter future violations, among other factors. The adopted rule text does not affect the agency's ability to enter agreed orders for administrative penalties within the agency's discretion. Because agreed orders are voluntarily agreed to by both sides, the agency believes that it is not necessary for the rule to describe the agreed order process.

The rule's restitution provisions are consistent with the authority to order restitution under Texas Finance Code, §14.251(b). The agency believes that the rule should specify this authority for cases where restitution is appropriate.

Subsection (d) describes the requirements for the cost analysis that sellers must provide to the OCCC before charging a documentary fee greater than $150. Paragraph (1) explains that the seller has the burden of showing that the documentary fee is reasonable, and that all included costs are reasonable, specified, and supported by documentation. This is similar to §84.205(e)(3) of the current rule, which states: "A retail seller has the burden of showing that all included costs are specified and supported by adequate documentation." One precommenter stated: "The new regulation should place the burden on the OCCC to demonstrate by specific cost elements how the agency determined that the requested documentary fee was too high." The agency disagrees with this statement. It is appropriate for the rule to place the burden on the seller, because the seller is in the best position to support the reasonableness of its documentary fee through specific documentation of its costs and processes. Placing the burden on the seller is also appropriate because Texas Finance Code, §348.006 prohibits sellers from charging an unreasonable documentary fee, and requires sellers to initiate the review process by providing a notification to the OCCC.

Paragraph (2) summarizes the five main reasonableness requirements for costs to be included in the documentary fee: (1) costs must be directly related to the preparation and processing of documents; (2) costs must relate to activities required to comply with local, state, or federal law concerning motor vehicle sales; (3) costs must comply with the prudent-business-person standard; (4) costs must comply with timing requirements, and must be incurred concurrently with or after the seller's preparation of a sales contract, and before title is transferred; and (5) the documentary fee may not include any finance charge, and any costs included in the documentary fee must be incurred uniformly in cash and credit transactions.

One precommenter disagreed with both parts of the timing requirement. Regarding the requirement that costs be incurred with or after the preparation of a sales contract, the precommenter stated: "[M]ost dealerships will collect a customer's personal information and identification before a test drive and begin working on verifying personal information for Red Flags/OFACs compliance." It is true that sellers incur a small amount of document-related costs before the negotiation or preparation of any sales contract. However, the agency believes that this concern is adequately addressed by paragraphs (2)(D)(i) and (3)(B)(ii)(V), which would allow the seller to include the cost of printing a copy of the buyer's driver's license to verify the buyer's identity, notwithstanding the timing requirement. The precommenter also stated: "Limiting costs to be incurred at the *earlier* of the time when title is actually transferred or legally required to be transferred is inconsistent with the Texas Department of [Motor] Vehicle's regulations allowing a dealership to transfer title after the deadline when there is good cause for a delay (i.e. out of state title issues, lien holder delays, etc.)." The agency disagrees with the contention that the timing requirement is inconsistent with TxDMV's rules. The general deadlines for transferring motor vehicle titles are provided in Texas Transportation Code, §501.0234, and TxDMV's rule at 10 TAC §215.144. As provided by Section 501.0234(f), a seller does not violate a titling deadline "during the time the seller is making a good faith effort to comply." For purposes of the documentary fee rule at paragraph (2)(D)(ii), the seller could include costs incurred while the seller is making a good-faith effort to comply with the deadline, as provided by Section 501.0234(f). In other words, the documentary fee rule is entirely consistent with the good-faith provision in Section 501.0234(f). In any case, the agency anticipates that this good-faith provision would have little effect on a final documentary fee cost analysis, because sellers generally transfer titles before the deadlines described in TxDMV's rule. For this reason, the agency believes that the adopted timing requirement is appropriate.

Paragraph (2)(D)(i) includes a change from the proposal to specify that the first part of the timing requirement does not apply to the costs of purchasing or printing forms specifically listed in subsection (d)(3)(B)(ii).

Paragraph (6)(F) describes several prohibited categories of costs that may not be included in the documentary fee, including advertising costs, floor planning costs, a salesperson's commission, and costs for the disbursement of money. Regarding the provision on disbursement of money, one precommenter noted that sellers might incur costs to send a required payment to a governmental entity. In response to this precomment, paragraph (6)(F)(v) specifies that it refers to the disbursement of money to a financial institution. This would, for example, prohibit sellers from including the cost of sending a certified check to pay off a trade-in vehicle in the documentary fee.

Paragraph (3) describes the form of the cost analysis for a documentary fee over $150. The cost analysis includes a summary of documentary fee costs and supporting exhibits. The summary consists of an itemization of costs in the following six categories: (1) personnel; (2) forms and printing; (3) postage; (4) software; (5) facilities costs; and (6) other costs.

Paragraph (3)(B)(i) describes the supporting exhibit for personnel, which must include job descriptions on a task level, salaries, and a complete description of how compensation is calculated for each included position. The rule explains that commission paid to a salesperson for the sale of a motor vehicle must be excluded. This is substantially similar to the requirement that appears in the current rule at §84.205(d)(4). Several precommenters expressed concern about this requirement, arguing that it could be read to totally prohibit a salesperson's compensation from being included in the documentary fee.

The TADA official comment expresses similar concerns regarding allowable compensation, stating that "commission employees should not be reduced to their base salary, i.e., minimum wage, in the cost analysis. Again, this reduction is not an accurate or true reflection of a dealership's costs. The percentage of an employee's time that is required to perform the handling of documents times compensation should be the formula incorporated in the dealership's cost analysis, not a minimum wage formula."

In order to clarify the requirement to exclude a salesperson's commission, the following sentence has been added to paragraph (3)(B)(i)(II): "If the seller offers a guaranteed minimum draw against future commission, then the draw may be included in the base salary rather than the commission." The commission disagrees with the commenter's suggestion that the rule will require all commission employees to be reduced to their base salary. Paragraph (3)(B)(i)(II) distinguishes between salespersons and other employees. For salespersons, the documentary fee may not include commission, because the work for which a salesperson receives commission-based compensation is not directly related to the processing of documents. For other employees, commission may be included if it complies with the rule's other requirements.

Paragraph (3)(B)(ii) describes the supporting exhibit for forms and printing. The paragraph includes a list of specific documents for which the seller may include costs, including the written contract for the sale of the motor vehicle, the application for certificate of title, the privacy notice, the Texas Lemon Law disclosure, the buyer's temporary tag, the window sticker (for new vehicles), and the used car buyers guide (for used vehicles). Paragraph (3)(B)(iii) describes the supporting exhibit for postage. Paragraph (3)(B)(iv) describes the supporting exhibit for software.

Paragraph (3)(B)(v) describes the supporting exhibit for facilities costs. The supporting exhibit for facilities must identify all included facilities costs (e.g., rent, property taxes, insurance), and any facilities costs must be adjusted to include only direct fixed costs that comply with the reasonableness requirements. The exhibit must describe an appropriate methodology for ensuring that the documentary fee includes only the portion of facilities costs corresponding to the percentage of time and space used for activities that may be included in the documentary fee. As an example, if a dealership is open 10 hours per day, 6 days a week, then one appropriate method to calculate includable facilities costs would be: (1) determining hourly fixed costs, which are the total fixed costs for one year divided by the total number of hours in a year (365 days/year × 24 hours/day = 8,760 total hours/year); (2) multiplying the result of (1) by 3,120 hours, which is the dealership's number of business hours in a year (52 weeks/year × 6 days/week × 10 business hours/day); (3) multiplying the result of (2) by the percentage of space used for includable activities (calculated on a square-footage basis); and (4) multiplying the result of (3) by the percentage of business time spent on includable activities in each space. This amount might vary among spaces, requiring the seller to calculate separate includable costs for each space. For example, if the title clerks spend 75% of their time on includable activities, and if the title clerks' office space is occupied during 90% of business

hours, then the percentage of business time spent on includable activities in the title clerks' office space would be 67.5% (75% × 90%).

One precommenter expressed concern about this methodology, arguing that it would not enable sellers to recoup costs that arise during hours while the dealership is closed. The precommenter argued that, for example, if a section of the facilities is used entirely for document processing and is used throughout standard business hours, then 100% of the costs of that section of the facilities should be includable in the documentary fee. Similarly, one precommenter stated: "If a clerk's office is empty for an hour at the beginning of the day and an hour during lunch, the dealership does not reduce its cost by that much."

The TADA official comment echoes these concerns: "The cost analysis for a facility should not be reduced if the facility is not open 24 hours a day and 7 days a week. This proposed reduction is not an accurate analysis of the true cost incurred and thus the cost analysis will not be accurate under this proposed formula."

The commission agrees that dealerships incur costs while closed, but these costs do not directly relate to processing documents. The documentary fee should only include costs that are directly related to processing documents. Overhead costs that are not directly related to processing documents should be included elsewhere, either in the cash price (for general costs) or the time price differential (for costs specific to credit transactions). The agency has allowed a portion of facilities costs to be included in the documentary fee, to recognize the fact that some facilities are necessary to process documents. The alternative would be to prohibit facilities costs altogether. The portion of facilities costs directly related to document processing is, by its nature, very narrow. It is true that a dealership incurs costs, for example, to keep electricity running during non-business hours, or to pay rent on space while employees are on break. However, these are indirect overhead expenses that are not directly related to processing documents. This type of cost should be included in the dealer's cost of goods sold, and covered by the cash price or the time price differential, rather than the separate and additional consideration of the documentary fee. Thus, for these reasons the commission maintains §84.205(d)(3)(B)(v) with respect to allowable facilities costs.

Paragraph (3)(B)(v) also explains that the documentary fee may not include any depreciation of facilities costs. The official TADA comment states that "depreciation should be allowed in the cost analysis as the dealership should be allowed to recoup its allocable cost attributable to the facility--the same as rent is an allowable cost." Depreciation is an indirect expense, rather than a cost actually paid by a seller to process documents. Depreciation is a non-cash expense with an income tax benefit, and it is used as a tool for orderly accounting. Because it is a non-cash expense, depreciation is more indirectly related to processing documents than rent. The relationship between depreciation and the seller's actual costs could vary considerably depending on the method of depreciation. If depreciation were allowed, this could cause facilities costs to reflect a disproportionate amount of the documentary fee. For this reason, the commission believes that it is appropriate for the rule to exclude depreciation of facilities costs and hence, §84.205(d)(3)(B)(v) is maintained for this adoption.

Regarding facilities costs, one precommenter stated: "Dealerships should also be allowed to include a percentage of the common areas, bathrooms and break rooms. Dealerships are required by law to have bathrooms and break rooms for employees and customers." The agency disagrees with the argument regarding bathrooms and break rooms. The cost of maintaining bathrooms and break rooms is another indirect overhead expense that does not directly relate to the processing of documents. It should be included in the cash price of the motor vehicle.

Paragraph (3)(B)(vi) describes the supporting exhibit for other costs. Paragraph (4) describes the requirements for a cost analysis covering multiple locations, and allows sellers to submit a single cost analysis covering more than one licensed location or registered office if the cost structures of all locations are substantially similar. Paragraph (5) explains that the OCCC will review each cost analysis to determine whether it is reasonable.

Paragraph (6) describes the OCCC's authority to order restitution if the seller charges a documentary fee over $150 or if the documentary fee includes costs that are not reasonable. One precommenter stated: "[W]e believe that the new regulations should *not* allow a dealer to raise the documentary fee above the safe harbor or the current fee if the fee is above the safe harbor until the OCCC has approved the increase. The restitution order can be crippling for a dealership and may not even result in a refund to customers if the dealership goes out of business. Setting aside a reserve to cover a restitution order is too disruptive to dealership business." The agency disagrees with this precomment for three reasons. First, this prohibition would be inconsistent with Texas Finance Code, §348.006(g)(2), which provides: "This section does not . . . require that the commissioner approve a specific documentary fee amount before a retail seller charges the fee." Second, the OCCC believes that setting up a reserve account for the portion of all documentary fees above $150 is a prudent practice, and several sellers have set up this type of account for documentary fees over $125. Third, if a reserve account is impractical for a seller, the seller could simply refrain from charging a documentary fee over $150 until it receives a statement from the OCCC that its documentary fee has been determined reasonable.

Paragraph (6) includes a change from the proposal to specify that the method of calculating restitution applies for each buyer.

III. Debt cancellation agreements

The adoption includes new §84.309, relating to debt cancellation agreements that require the buyer to maintain insurance. These agreements must be submitted for approval to the OCCC, and the OCCC has 45 days to approve or deny an agreement as provided by Texas Finance Code, §348.604. The denial of a debt cancellation agreement may be appealed to the commission, as provided by Texas Finance Code, §348.604(e). In general, the purpose of the amendments is to describe the process for submitting the agreements and the procedure for appealing a denial of an agreement.

Subsection (a) describes the purpose and scope of the rule. Subsection (b) explains that an agreement must be submitted in accordance with the OCCC's instructions.

Subsection (c) provides a general $250 fee for submitting a debt cancellation agreement. Since the Finance Code's debt cancellation agreement submission requirements went into effect in 2011, each submitted agreement has been reviewed by an OCCC attorney and an OCCC review examiner. The employees review each agreement to make sure that it includes all elements required by Texas Finance Code, §348.602 and §348.603, and that the agreement does not contain inconsistent or misleading provisions. If the agreement cannot be approved as submitted,

the employees will draft a letter that explains how the agreement must be amended and provides the submitter an opportunity to amend the form before it is denied. While it would be within the OCCC's authority to deny an agreement without sending a follow-up letter, the agency believes that these letters are an important tool to help companies submit an approvable version of the agreement before the 45-day deadline, conserving resources that would be spent on a denial and subsequent resubmission. The $250 amount is based on the average time spent by OCCC employees to process the submission, review the agreement, and draft follow-up correspondence. The adopted fee is authorized under Texas Finance Code, §14.107(a), which authorizes the commission to "establish reasonable and necessary fees for carrying out the commissioner's powers and duties" under Chapter 348.

One precommenter expressed concern about the $250 fee combined with the manner in which the OCCC has sent follow-up letters on debt cancellation agreements. The precommenter stated: "In theory, we do not oppose a fair fee. We certainly understand that a fee might be appropriate for new submissions due to the intensive work involved. . . . Our specific concerns involve the way the proposed rules, coupled with the internal policies and practices of OCCC, will impact the efficiency and fairness of the process." The OCCC will review its internal policies for processing debt cancellation agreements to ensure that companies have a reasonable amount of time to respond to initial follow-up correspondence.

Subsection (d) explains that the OCCC will send a notice of approval or denial within 45 days of receiving a debt cancellation agreement submission. Subsection (e) explains that the person who submitted the form can appeal a denial by serving a notice of appeal on the OCCC no later than the 30th calendar day after the date of denial. Subsection (f) explains that the appeal is a contested case under the Administrative Procedure Act (Texas Government Code, Chapter 2001). Subsection (g) explains that the administrative law judge in the contested case will issue a proposal for decision to the commission. Subsection (h) explains that the commission will issue a final order. Subsection (i) explains that the order may be appealed to a Travis County district court. These provisions are intended to provide due process and fair procedures for appealing the denial of a debt cancellation agreement.

IV. Licensing and annual renewal statement

An adopted amendment to §84.601(7)(A) amends the definition of "principal party" for sole proprietorships. The amendment removes the statement that proprietors include spouses with a community property interest. In addition, an amendment to §84.602(1)(A)(v)(I) removes the requirement to disclose community property interests and documentation regarding separate property status, and replaces it with a requirement to disclose the names of the spouses of principal parties if requested. The agency currently spends considerable time requesting information from license applicants to determine the status of spouses' property interests, and explaining these concepts to applicants. These amendments will help streamline the licensing process and reduce regulatory burden. The amendments will also make the application process simpler and more straightforward for applicants. In specific cases where the spouse is a principal party (e.g., where the business is actually a partnership between the spouses rather than a sole proprietorship), the OCCC would be able to request additional information about the spouse under current §84.602(1)(C).

Section 84.604 has been repealed and replaced with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. The prior version of §84.604 described what constitutes a transfer of ownership requiring the filing of a transfer application. The adopted new rule largely maintains the requirements under the former rule, but it provides two different paths the transferee can take for a transfer of ownership: either an application to transfer the license, or a new license application on transfer of ownership. The amendments outline what the application has to include, the timing requirements, and which parties are responsible at different points in the transfer process. Subsection (a) describes the purpose of the new section. Subsection (b) defines terms used throughout the subsection. In particular, subsection (b)(5) defines the phrase "transfer of ownership," listing different types of changes in acquisition or control of the licensed entity.

Subsection (c) specifies that a license may not be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §348.512 and §353.512. Subsection (d) provides a timing requirement, stating that a complete license transfer application or new license application on transfer of ownership must be filed no later than 30 days after the transfer of ownership. Subsection (e) outlines the requirements for the license transfer application or new license application on transfer of ownership. These requirements include complete documentation of the transfer of ownership, as well as a complete license application for transferees that do not hold an existing motor vehicle sales finance license. Subsection (e)(5) explains that the application may include a request for permission to operate.

Subsection (f) provides that the OCCC may issue a permission to operate to the transferee. A permission to operate is a temporary authorization from the OCCC allowing a transferee to operate while final approval is pending for an application.

Subsection (g) specifies the transferee's authority to engage in business if the transferee has filed a complete application including a request for permission to operate. It also requires the transferee to immediately cease doing business if the OCCC denies the request for permission to operate or denies the application.

Subsection (h) describes the situations where the transferor is responsible for business activity at the licensed location, situations where the transferee is responsible, and situations where the transferor and transferee share joint and several responsibility.

In §84.605, concerning Change in Form or Proportionate Ownership, conforming changes have been made corresponding to adopted new §84.604. Throughout subsections (b) and (c), references have been added to the second path a transferee may take, i.e., a new license application on transfer of ownership.

Adopted amendments to §84.607 clarify the circumstances in which a licensee must notify the OCCC of changes to information in the original license application. The amendments specify that the requirement to provide updated information within 14 days applies before a license application is approved. New §84.607(b) provides that a licensee must notify the OCCC within 30 days if the information relates to the names of principal parties, criminal history, regulatory actions, or court judgments. New §84.607(c) specifies that each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, and that it is a best practice for licensees to regularly review contact information.

Adopted amendments to §84.610 clarify the agency's procedure for providing delinquency notices to licensees that have failed to pay an annual assessment fee. The amendments specify that notice of delinquency is considered to be given when the OCCC sends the notice by mail to the address on file with the OCCC as a master file address, or by e-mail to the address on file with the OCCC (if the licensee has provided an e-mail address).

An adopted amendment to §84.611(c) provides that a license applicant must pay a fee to a party designated by the Texas Department of Public Safety (DPS) for processing fingerprints, replacing a statement that the fee will be paid to the OCCC. This amendment conforms the rule to the method by which applicants currently provide fingerprint information through DPS's Fingerprint Applicant Services of Texas (FAST) program.

Also in §84.611, the adoption amends subsection (e) by adding new paragraph (3), which requires licensees to file an annual renewal statement in connection with each renewal. These statements would include the dollar volume and number of retail installment contracts originated, acquired, or serviced during the preceding calendar year. The adoption specifies that this information is confidential because it is collected under the OCCC's examination authority. The adoption also includes conforming changes to paragraph (1)(C) of subsection (e).

These amendments have two main purposes. First, they would help the OCCC schedule examinations by providing information about the size of licensees, as well as scope and risk factors. Second, they would help the OCCC evaluate whether larger-volume licensees should pay a greater portion of the fees assessed to the Chapter 348 licensee population, in light of the increased examination resources that these licensees require. The current rule at §84.611(e)(1)(C) allows the OCCC to collect a volume-based fee as part of a licensee's annual assessment. This rule was originally adopted under Texas Finance Code, §14.107(b), which authorizes the commission to adopt rules "provid[ing] that the amount of a fee charged to a license holder is based on the volume of the license holder's regulated business and other key factors." However, because the OCCC cannot conduct examinations of all licensees every year, the OCCC cannot currently determine the dollar volume of retail installment contracts that a licensee originated, acquired, or serviced during a previous year. The amendments would enable the agency to collect this information.

Subsection (e)(3) contains a change from the proposal to remove a sentence that stated: "The licensee must provide the statement at the time of filing the renewal." The agency is considering allowing licensees to submit the statement shortly after renewal, particularly for the renewal cycle that will occur in summer 2016.

At the stakeholder meeting, one precommenter stated that sellers do not currently maintain information about the dollar amount of contracts that they originate. The precommenter suggested that the rule allow sellers to submit only the number of contracts, rather than the dollar volume. However, it is the OCCC's understanding that dealer software programs generally allow sellers to generate reports showing annual dollar volumes. It is also the agency's understanding that sellers need this information to correctly calculate their revenues for income-tax purposes. Currently, the agency anticipates that the dollar volume would be based on the amount financed of each contract originated, acquired, or serviced during the previous calendar year.

Regarding the proposed new subsection (e) of §84.611, the official AFSA comment requests clarification in two areas: 1) the definition of retail installment contracts "serviced" in relation to the variable assessment fee that may be charged under §84.611(e)(1)(C); and 2) the calculation of the dollar volume of contracts.

First, the AFSA comment states that "additional information on how the OCCC defines serviced is needed. . . . [I]t is unclear if a company that retains servicing rights for the lifetime of a contract would owe variable fees one time at the origination of the contract or each year over the lifetime of the contract." The OCCC intends to address this issue as it develops instructions for submitting the annual renewal statement. Further, the AFSA comment states that "there could easily be a situation where the initial acquirer, the subsequent acquirer, and the servicer (i.e., the initial acquirer that retains servicing rights) all pay the fee, potentially all in the same year." The OCCC has not yet determined what the amount of the volume-based fee will be. Because the OCCC would examine all three entities (the seller, the holder, and the servicer), it might be appropriate for each entity to pay part of the volume-based fee, in order to ensure that the OCCC recoups its costs and each entity pays its appropriate fair share of the regulatory expenses.

Second, regarding the calculation of the dollar volume of contracts for the annual renewal statement required by §84.611(e)(3), the AFSA comment seeks guidance on the following questions: "Is this volume based on the account balance on a specific date? Is this the date the contract was acquired? Does this include contracts that are paid off in the same year they were purchased or serviced?" As stated in the preamble of the proposal, the agency anticipates that the dollar volume will be based on the amount financed of each contract originated, acquired, or serviced during the previous calendar year. 41 TexReg 1619 (March 4, 2016). The agency intends to provide more information about specific calculation requirements as it develops the instructions for the annual renewal statement.

Adopted new §84.613 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of a motor vehicle sales finance license. This section replaces former §84.613 and §84.614, which have been repealed. Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose. Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the licensed occupation of a motor vehicle sales finance licensee.

Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a motor vehicle sales finance licensee, including the reasons the crimes relate to the occupation, as provided by Texas Occupations Code, §53.025(a). Subsection (c)(1) includes changes from the proposal to more clearly specify the offenses that are directly related to the licensed occupation. The listed offenses now include theft, assault, and any offense that involves misrepresentation or a false or misleading statement. The listed offenses are similar to the offenses involving moral character under previous §84.613(d)(1). The agency believes that these offenses directly relate to the licensed occupation, and that they reflect negatively on an applicant's character and fitness to hold a license.

Subsection (c)(2) contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a licensee, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or licensee unfit, as provided by Texas Occupations Code, §53.023. Subsection (d) describes the OCCC's authority to deny a license application if it 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). Subsection (e) explains that the OCCC will revoke a license 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). Subsection (f) identifies other grounds for denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

V. Other technical corrections

Adopted amendments to §84.708 and §84.709 regarding recordkeeping provide updated citations to a TxDMV regulation concerning the discharge or release of a lien. The parallel amendments are contained in §84.708(e)(2)(P) and §84.709(e)(2)(H).

The adoption includes clarifying changes to §84.804, which relates to provisions required in a retail installment sales contract. A clarifying change in the first sentence of the section explains that a retail installment sales contract must include all provisions required by Texas Finance Code, Chapter 348, and other law. An amendment to paragraph (4) explains that the itemized charges may include other charges authorized under Chapter 348. The rule adds a new provision at paragraph (4)(Q) explaining that the itemized charges may include a charge for an automobile club membership. This is based on a 2013 amendment to Texas Finance Code, §348.005(4), authorizing a seller to include a charge for an automobile club in the itemized charges of a retail installment sales contract.

The adoption includes clarifying changes to §84.804 relating to model plain-language contract clauses for Chapter 348 transactions. In paragraph (16)(C)(i)(II), text has been added to clarify that a model clause should be used for scheduled installment earnings transactions where the seller discloses the annual percentage rate using a method other than a 365/365 basis. In paragraph (20), an amendment specifies that a model clause refers to contracts using either the sum of the periodic balances method or the scheduled installment earnings method. In paragraph (20)(B)(ii), the model refunding clause for contracts using the scheduled installment earnings method is amended for clarity, and the rule text is amended to specify that this clause should be used if sales tax is advanced. In addition, new paragraph (20)(B)(iii) provides a new model clause for scheduled installment earnings contracts with deferred sales tax. Conforming changes are contained in the model retail installment sales contract for Chapter 348 transactions at figure 7 TAC §84.809(b).

The AFSA comment states: "AFSA requests consideration of an amendment to the model retail installment sales contract form to include lines for both 'Cash to buyer' and 'Payoff by seller' on the itemized list under 'Gross Trade-in' in the 'Downpayment' section of the standard form." The model contract at figure 7 TAC §84.809(b) already contains a line labeled "payoff by Seller," which is under "Gross trade-in" in the downpayment section of the itemization of amount financed. The commission believes that it would be inappropriate to add a "Cash to buyer" line, because sellers are generally prohibited from paying cash to buyers under Texas Finance Code, §348.403. Accordingly, the commission declines to adopt this suggestion.

VI. Documentary fee rule delayed effective date

New §84.205 and the repeal of previous §84.205, regarding documentary fees, will have a delayed effective date of June 1, 2016. The purpose of the delay is to allow time to incorporate electronic documentary fee submission into the agency's online system. The agency anticipates that the updated system for submitting documentary fees will be available to licensees by June 1.

VII. Statutory authority

All of the amendments, new rules, and repeals are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The rule changes in §84.205 concerning documentary fees are adopted under Texas Finance Code, §348.006(h), which authorizes the commission to adopt rules, including rules relating to the standards for a reasonableness determination or disclosures, necessary to enforce §348.006. Within §84.205, the restitution provisions are adopted under Texas Finance Code, §14.251(b), which authorizes the commissioner to order restitution to an identifiable person injured by a violation of Title 4.

The adopted fee in §84.309(c) and the adopted amendments to §84.611(e) are authorized under Texas Finance Code, §14.107, which authorizes the commission to establish reasonable and necessary fees for carrying out the commissioner's powers and duties under Chapter 348.

The statutory provisions affected by the adopted rule changes are contained in Texas Finance Code, Chapter 348.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §84.102

Statutory Authority

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 348.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

7 TAC §84.201, §84.203

Statutory Authority

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 348.

§84.203. Deferment Charge.

(a) Definition. A "deferment charge" means a charge to defer the payment date of a scheduled payment or partial payment on a contract. A deferment charge prescribed by this section may occur in a retail installment transaction that employs the precomputed add-on method for regular payment contracts using the sum of the periodic balances, the scheduled installment earnings method, or the true daily earnings method. This section applies only to an amendment relating to the deferment of all or a part of one or more installments, and does not apply to amendments relating to renewing, restating, or rescheduling the unpaid balance under a retail installment sales contract. The parties to a retail installment sales contract may agree to modify the terms of the transaction as long as the amendment conforms to the requirements of Texas Finance Code, Chapter 348, Subchapter B.

(b) Written deferment agreement.

(1) General requirements. A retail buyer and a holder may mutually agree to defer all or a part of one or more scheduled installments. A deferment agreement must be in writing and must be noted in the account record at the time the deferment is made. The written deferment agreement must include all of the following:

(A) the name of the holder;

(B) the name of the retail buyer;

(C) the account number of the retail buyer;

(D) the date of the deferment;

(E) the installment or installments being deferred;

(F) the deferment period;

(G) the total amount of any deferment charge and any authorized additional deferment cost;

(H) the date and amount of the next installment due; and

(I) any other conditions of deferment.

(2) Signature and delivery. A deferment agreement is an amendment to the retail installment sales contract that must be confirmed in a writing signed by the retail buyer and delivered to the retail buyer, as provided by Texas Finance Code, §348.116. The retail buyer's written agreement to the bilateral or mutual deferment may be confirmed by an email signature, an electronic signature, a facsimile signature, a written notation made by the retail buyer on a signed check, or some other writing signed by the retail buyer.

(3) Disaster exception. A holder must deliver the deferment agreement to the retail buyer, but is not required to obtain the retail buyer's signature, if the following conditions are met:

(A) The retail buyer resides in an area designated as a state of disaster under Texas Government Code, §418.014; and

(B) The deferment occurs before the state of disaster has been terminated:

(i) by executive order; or

(ii) by expiration as described in Texas Government Code, §418.014(c).

(c) Limitation of number of installments being deferred per amendment. A holder may only defer the equivalent of three monthly installments per amendment. This limitation applies to the number of whole or partial installments that can be deferred, not the length of time an installment can be deferred.

(d) Computation of deferment charge. A holder of a retail installment sales contract under Texas Finance Code, Chapter 348 may calculate the deferment charge by any method of calculation as long as the deferment charge does not exceed the maximum amount permitted by Texas Finance Code, §348.114 and this section.

(1) Regular payment contract using sum of the periodic balances method.

(A) Base deferment charge. For a regular payment contract employing the add-on method and the refunding method of the sum of the periodic balances, a holder may assess, charge, and collect a base deferment charge computed by:

(i) Multiplying the amount of the installment or installments being deferred by either:

(I) the maximum effective rate authorized for a regular payment contract for the monthly term; or

(II) a lower rate agreed to by the parties;

(ii) dividing the results of clause (i) of this subparagraph by 12; and

(iii) multiplying the results of clause (ii) of this subparagraph by the number of months the installment or installments are being deferred.

(B) Additional deferment costs. In addition to the base deferment charge authorized by this section, the holder of a retail installment sales contract may collect from the retail buyer the amount of the additional cost to the holder for:

(i) premiums for continuing in force any insurance coverages provided by the retail installment contract; and

(ii) any additional necessary official fees.

(C) Minimum deferment charge. The minimum deferment charge authorized under this paragraph is $1.00.

(D) Application of payments. For a regular payment contract employing the add-on method and the refunding method of the sum of the periodic balances, if a payment is submitted from which a deferment charge is taken, any excess of the amount paid over the amount necessary to bring the account current must be applied to the remaining balance of the retail installment sales contract.

(E) Time price differential not included. For a regular payment contract employing the add-on method and the refunding method of the sum of the periodic balances, the deferment charge does not include time price differential agreed upon in the retail installment sales contract.

(2) Scheduled installment earnings method.

(A) Base deferment charge. For a regular or an irregular payment contract employing the scheduled installment earnings method, a holder may assess, charge, and collect a base deferment charge computed by:

(i) Multiplying the amount of the installment or installments being deferred by either of the following rates computed on a daily basis using a 365-day calendar year:

(I) the maximum annualized daily rate authorized for the contract, as described by Figure: 7 TAC §84.201(d)(2)(B)(iii); or

(II) a lower rate agreed to by the parties, which may be the contract rate; and

(ii) multiplying the results of clause (i) of this subparagraph by the actual number of days the installment or installments are being deferred.

(B) Additional deferment costs. In addition to the base deferment charge authorized by this section, the holder of a retail installment sales contract may collect from the retail buyer the amount of the additional cost to the holder for:

(i) premiums for continuing in force any insurance coverages provided by the retail installment contract; and

(ii) any additional necessary official fees.

(C) Minimum deferment charge. The minimum deferment charge authorized under this paragraph is $1.00.

(D) Application of payments. For a contract using the scheduled installment earnings method, if a payment is submitted from which a deferment charge is taken, any excess of the amount paid over the amount necessary to bring the account current must be applied to the remaining balance of the retail installment sales contract. However, any difference that exceeds $3.00 must be returned to the retail buyer if the retail buyer requests the refund within 30 days of the payment.

(E) Time price differential not included. For a contract using the scheduled installment earnings method, the deferment charge does not include time price differential agreed upon in the retail installment sales contract.

(3) True daily earnings method.

(A) Base deferment charge. For a regular or an irregular payment contract employing the true daily earnings method, a holder may assess, charge, and collect a base deferment charge computed by:

(i) Multiplying the amount of the installment or installments being deferred by either of the following rates computed on a daily basis using a 365-day calendar year:

(I) the maximum annualized daily rate authorized for the contract, as described by Figure: 7 TAC §84.201(d)(2)(B)(iii); or

(II) a lower rate agreed to by the parties, which may be the contract rate; and

(ii) multiplying the results of clause (i) of this subparagraph by the actual number of days the installment or installments are being deferred.

(B) Additional deferment costs. In addition to the base deferment charge authorized by this section, the holder of a retail installment sales contract may collect from the retail buyer the amount of the additional cost to the holder for:

(i) premiums for continuing in force any insurance coverages provided by the retail installment contract; and

(ii) any additional necessary official fees.

(C) Minimum deferment charge. The minimum deferment charge authorized under this paragraph is $1.00.

(D) Accrual of time price differential. For a contract using the true daily earnings method, all time price differential that will accrue on the deferred installments during the deferment period must be included in the base deferment charge. If the holder agrees to a base deferment charge that is less than the amount of time price differential that would otherwise have accrued on the deferred installments during the deferment period, then it must waive the accrued time price differential on the deferred installments for the deferment period in excess of the base deferment charge the holder agreed to. The deferment charge does not include time price differential that accrues on amounts other than the deferred installments, nor does it include time price differential that accrues outside of the deferment period.

(e) Noncompliance. Deferment fees not assessed or collected in accordance with the requirements of this section are subject to refund to the retail buyer. In the event deferment fees are refunded to the retail buyer, no rescheduling of the retail installment sales contract is permitted.

(f) False, misleading, or deceptive representation. A holder may not make a false, misleading, or deceptive representation relating to a deferment charge. For example, in a contract using the true daily earnings method, a holder may not make an offer to the retail buyer such as "Payment Holiday--Pay Only $25" if the total deferment charge, including all time price differential that the holder will charge on the deferred installment for the deferment period, exceeds $25. If a holder makes a false, misleading, or deceptive representation regarding a deferment charge, then the deferment charge is subject to refunding under subsection (e).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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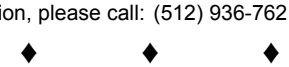

7 TAC §84.205

Statutory Authority

The repeal is adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code,

§348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The repeal of §84.205, concerning Documentary Fee Reasonableness Standards, is adopted under Texas Finance Code, §348.006(h), which authorizes the commission to adopt rules, including rules relating to the standards for a reasonableness determination or disclosures, necessary to enforce §348.006.

The statutory provisions affected by the adopted repeal are contained in Texas Finance Code, Chapter 348.

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7 TAC §84.205

Statutory Authority

The new rule is adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The rule changes in §84.205 concerning documentary fees are adopted under Texas Finance Code, §348.006(h), which authorizes the commission to adopt rules, including rules relating to the standards for a reasonableness determination or disclosures, necessary to enforce §348.006. Within §84.205, the restitution provisions are adopted under Texas Finance Code, §14.251(b), which authorizes the commissioner to order restitution to an identifiable person injured by a violation of Title 4.

The statutory provisions affected by the adopted new rule are contained in Texas Finance Code, Chapter 348.

§84.205. Documentary Fee.

(a) Purpose. Under Texas Finance Code, §348.006(e), before a retail seller charges a documentary fee greater than $50, the seller must provide the OCCC with a written notification of the maximum amount of the documentary fee the seller intends to charge. The OCCC may review the amount of the documentary fee for reasonableness. This section describes the requirements for the notification and cost analysis.

(b) General requirements.

(1) $50 or less. A seller is not required to provide a notification or cost analysis to the OCCC before charging a documentary fee of $50 or less.

(2) Over $50, up to $150. Before charging a documentary fee greater than $50, but less than or equal to $150, a seller must provide a notification to the OCCC. A seller is not required to provide a cost analysis before charging a documentary fee in this range. The OCCC will presume a documentary fee of $150 or less to be reasonable.

(3) Over $150. Before charging a documentary fee greater than $150, a seller must provide a notification and a cost analysis to the OCCC.

(c) Notification.

(1) Generally. Before charging a documentary fee greater than $50, a seller must provide a written notification to the OCCC, stating the amount of the maximum documentary fee that the seller intends to charge.

(2) Notification for each location. A seller must provide a notification for each licensed location or registered office at which motor vehicles are sold. If a seller has more than one license or registered office in the same physical space, then it must provide a notification for each license or registered office under which it sells vehicles. For example, if a seller has two registered offices at the same location and does business under the names of both registered offices, then it must provide a notification for each of the two registered offices.

(3) Form. The notification must be provided on a form prescribed by the OCCC for receiving notifications of documentary fee amounts. A notification is not effective until the OCCC receives a complete form.

(4) Transfer of ownership. In the event of a transfer of ownership described by §84.604 of this title (relating to Transfer of License; New License Application on Transfer of Ownership), if the transferee intends to charge a documentary fee greater than $50, then the transferee must provide a documentary fee notification for each licensed location or registered office that the transferee will operate. The transferee must provide the notification no later than the 30th calendar day following the transfer of ownership. If the transferee has not filed a notification on or before the 30th calendar day following the transfer of ownership, then it must cease charging a documentary fee greater than $50. The transferee may not charge a greater amount than the amount described in the transferor's previous notification until the transferee has provided a complete notification listing the amount that the transferee intends to charge. If the transferor did not previously provide a documentary fee notification, then the transferee may not charge a documentary fee greater than $50 until it has provided a complete notification listing the amount it intends to charge.

(5) Failure to provide notification. A seller violates this subsection if the seller:

(A) charges a documentary fee greater than $50 without first providing a complete notification to the OCCC; or

(B) provides a notification to the OCCC and charges a documentary fee greater than the amount described in the notification.

(6) Restitution and order to lower documentary fee. If a seller violates this subsection, then the OCCC may take an action, including ordering the seller to do one or more of the following:

(A) provide restitution to affected buyers;

(B) lower its documentary fee prospectively;

(C) provide a complete, accurate notification to the OCCC;

(D) cease charging a documentary fee greater than $50 for a specified period of time.

(7) Restitution amount. If a seller does not provide a complete notification to the OCCC, then the amount of restitution for violating this subsection will not exceed the amount of the documentary

fee the seller charged or received minus $50 (for each buyer). If the seller provides a notification but charges a documentary fee greater than the amount described in the notification, then the restitution for violating this subsection will not exceed the amount of the documentary fee the seller charged or received minus the amount of its filing (for each buyer).

(d) Cost analysis.

(1) Generally. Before charging a documentary fee greater than $150, a seller must submit a cost analysis showing that the documentary fee is reasonable. The seller has the burden of showing that the documentary fee is reasonable, and that all included costs are reasonable, specified, and supported by adequate documentation. This subsection does not require the OCCC's approval of a documentary fee before a seller charges it. However, the OCCC may order restitution under subsection (d)(6) if a seller charges a documentary fee over $150 that is not supported by a complete cost analysis, or if the documentary fee includes costs that are not reasonable.

(2) Reasonableness requirements. In order to be reasonable, a documentary fee must reflect costs actually incurred by the seller in preparing and processing documents for a motor vehicle sale. All included costs must comply with the following reasonableness requirements.

(A) Directly related and allocable. Costs must directly relate to the seller's preparation and processing of documents for a motor vehicle sale. Costs must be allocable (i.e., chargeable or assignable) to the objective of preparing and processing documents. Costs must be incurred by the seller. A seller may not increase any authorized charge imposed by a third party.

(B) Allowable. Costs must relate to activities required to comply with local, state, or federal law concerning motor vehicle sales. Costs related to ancillary or optional products may not be included. Costs must be determined in accordance with generally accepted accounting principles.

(C) Prudent business person. Costs must comply with the prudent-business-person standard. This means that costs are limited to what a prudent business person would pay in a competitive marketplace. For example, hiring a limousine to deliver documents does not comply with the prudent-business-person standard. In determining whether a given cost is prudent, consideration will be given to the following:

(i) whether the cost is of a type generally recognized as ordinary, customary, and necessary for preparing and processing documents for a motor vehicle sale;

(ii) the restraints or requirements imposed by sound business practices, arm's-length bargaining, and applicable laws and regulations;

(iii) market prices for comparable goods or services; and

(iv) the necessity of the cost.

(D) Timing.

(i) Costs must be incurred either concurrently with or after the seller's preparation of at least one of the following: a buyer's order, bill of sale, purchase agreement, or retail installment sales contract. Any costs incurred before the preparation of the earliest of these documents may not be included. This clause does not apply to the costs of purchasing or printing forms specifically listed in subsection (d)(3)(B)(ii).

(ii) Costs must be incurred before the title of the purchased motor vehicle is actually transferred, or when title is legally required to have been transferred, whichever is earlier.

(iii) Costs relating to a trade-in motor vehicle must be incurred before the title of the trade-in motor vehicle is actually transferred, or when the title is legally required to have been transferred, whichever is earlier.

(E) No finance charge. The documentary fee may not include any amount that would be considered a finance charge under the Truth in Lending Act, 15 U.S.C. §§1601-1667f. All included costs must be incurred uniformly in cash and credit transactions.

(i) The documentary fee may not include any cost associated with the negotiation or assignment of the retail installment sales contract to another financial institution or a related finance company.

(ii) The documentary fee may not include any cost associated with the evaluation of the buyer's creditworthiness. A seller may include the cost of obtaining a credit report, if the seller incurs this cost in a substantial number of transactions where credit is not extended, and the cost complies with the other requirements described in this subsection (e.g., the cost of obtaining a credit report to ensure compliance with the USA PATRIOT Act, 31 U.S.C. §5318(l)(2)(C)).

(iii) The documentary fee may not include the cost of preparing any disclosure or contractual provision that is used only in credit transactions. In particular, the documentary fee may not include the cost of preparing a Truth in Lending disclosure statement.

(F) Other prohibitions. The documentary fee may not include costs associated with any of the following:

(i) advertising;

(ii) floor planning (i.e., the seller's credit arrangements for the purchase of its inventory);

(iii) manufacturer or distributor's rebates;

(iv) the price of any report on the condition or history of the motor vehicle to be purchased or traded in;

(v) the disbursement of money to a financial institution (e.g., the cost of issuing a certified check);

(vi) a salesperson's commission for the sale of the motor vehicle (but commissions for an employee other than a salesperson may be included if they comply with subsection (d)(3)(B)(i)).

(3) Form of cost analysis. The cost analysis must include a summary of documentary fee costs and supporting exhibits.

(A) Summary of documentary fee costs. The summary of documentary fee costs must be provided on a form prescribed by the OCCC.

(i) The summary must include an itemization of the amount of costs for each of the following categories:

(I) personnel;

(II) forms and printing;

(III) postage;

(IV) software;

(V) facilities costs;

(VI) other costs.

(ii) The summary must include the number of sales completed during the period used to determine the costs described in clause (i).

(B) Supporting exhibits. A seller must provide a supporting exhibit for each category of costs included in the documentary fee. A seller must prorate costs to ensure that costs that are impermissible under this subsection are excluded. If a category is associated with both permissible and impermissible costs, then a seller must include only the permissible portion and explain the percentage of the category that is being included. The OCCC may prescribe a form for the supporting exhibits. A seller is not required to provide an exhibit for any category that does not include any costs.

(i) Personnel. The supporting exhibit for personnel must describe how all employee salaries included in the documentary fee comply with the reasonableness requirements described in this subsection.

(I) The supporting exhibit for personnel must include a job description for each position. Job descriptions must be specific enough to illustrate which functions are unique to each listed position, on a task level. The job description must identify which specific tasks are included as a cost component of the documentary fee, and which are excluded.

(II) The supporting exhibit for personnel must include each salary and a complete description of how compensation is calculated for each position (e.g., a pay plan).

(-a-) Commission paid to a salesperson for the sale of a motor vehicle must be excluded. If the seller includes a portion of the base salary paid to a salesperson, then the seller must explain how the salary has been prorated to exclude impermissible costs. If the seller offers a guaranteed minimum draw against future commission, then the draw may be included in the base salary rather than the commission.

(-b-) If the seller includes any commission paid to a person other than a salesperson, then the seller must explain how the commission has been prorated to exclude any impermissible costs (e.g., commission for ancillary products, or commission that arises only in credit transactions). If the seller offers a guaranteed minimum draw against future commission, then the draw may be included in the base salary rather than the commission.

(III) If costs of training employees are included, then the supporting exhibit must include an agenda for the training and an explanation of the subject matter of the training. The seller must explain how training costs have been prorated to exclude impermissible costs (e.g., costs of training employees on responsibilities that arise only in credit transactions, or that arise before preparation of a purchase agreement).

(ii) Forms and printing. The supporting exhibit for forms and printing must describe all included costs and explain which forms are purchased or printed. All included forms must be used uniformly in cash and credit motor vehicle sales. If a seller uses a form only in certain transactions, then the seller must prorate costs by the fraction of the seller's sales in which the form is used. For example, if a form is used only for used motor vehicle sales, then a seller must prorate the cost of the form by the fraction of the seller's sales that are used motor vehicles. If a seller includes forms not listed in this clause, then the supporting exhibit must include an explanation of how the forms comply with the reasonableness requirements described in this subsection, with a citation to the law that requires the form. A seller may include the costs of the following forms:

(I) a written contract for the sale of the motor vehicle, as required by Texas Business and Commerce Code §2.201, which may be in the form of a purchase agreement, buyer's order, bill of sale, or retail installment sales contract (if a seller includes the cost of a retail installment sales contract, then the cost must be prorated to exclude the Truth in Lending disclosure statement and any provisions that are used only in credit transactions);

(II) an application for certificate of title, form 130-U, as required by Texas Transportation Code, §501.023;

(III) a statement of the county of title issuance, form VTR-136, as required by Texas Transportation Code, §501.023;

(IV) a privacy notice, as required by the Gramm-Leach-Bliley Act, 15 U.S.C. §6803;

(V) a copy of the buyer's driver's license, in order to verify the buyer's identity and ensure compliance with the USA PATRIOT Act, 31 U.S.C. §5318(l)(2)(C);

(VI) a report of a cash payment over $10,000, form 8300, as required by the USA PATRIOT Act, 31 U.S.C. §5331;

(VII) a Texas Lemon Law disclosure, as required by Texas Occupations Code, §2301.610;

(VIII) the buyer's temporary tag, as required by Texas Transportation Code, §503.063, and 43 Texas Administrative Code §245.155;

(IX) the buyer's temporary tag receipt, as required by 43 Texas Administrative Code §245.156;

(X) a window sticker for new vehicles, as required by 15 U.S.C. §1232; and

(XI) a used car buyers guide, as required by the Federal Trade Commission's Used Motor Vehicle Rule, 16 C.F.R. §455.2.

(iii) Postage. The supporting exhibit for postage must identify the postage carrier, the types of documents that are sent by postage, and each specific postage cost. All postage costs must comply with the reasonableness requirements described in this subsection, including the prudent-business-person standard. The OCCC will presume that a prudent business person would use certified mail from the United States Postal Service or a similarly priced service. The exhibit must explain how costs that do not comply with this subsection (e.g., costs of sending documents to other financial institutions) have been excluded.

(iv) Software. The supporting exhibit for software must identify the cost of each included piece of software. The exhibit must state the type of software used and the specific functions of the software. The exhibit must identify which specific software functions are included as a cost component of the documentary fee, and which are excluded. If the software is associated with both permissible and impermissible costs, then a seller must include only the permissible portion and explain the percentage of the category that is being included.

(v) Facilities costs. The supporting exhibit for facilities must identify all included facilities costs (e.g., rent, property taxes, insurance). Any facilities costs must be adjusted to include only direct fixed costs that comply with the reasonableness requirements described in this subsection. The documentary fee may not include any depreciation of facilities costs. The exhibit must describe an appropriate methodology ensuring that the documentary fee includes only the portion of the facilities costs that corresponds to the percentage of time and space used for activities that may be included in the documentary fee.

(vi) Other costs. The supporting exhibit for other costs must identify all other costs included in the documentary fee. The exhibit must state the amount of each cost and the nature of the associated activities. If the activities are associated with both permissible and impermissible costs, then a seller must include only the permissible portion and explain the percentage of the category that is being included.

(4) Cost analysis covering multiple locations. A seller may submit a cost analysis that covers more than one licensed location or registered office if:

(A) the cost structures of all covered locations are substantially similar (e.g., due to centralized processing among a group of locations); and

(B) in the supporting exhibits, the seller explains which costs are similar among the locations and explains the differences in costs among the locations.

(5) OCCC review. The OCCC will review each cost analysis in order to determine whether the documentary fee is reasonable for the seller that provided the analysis. If the cost analysis does not support the seller's documentary fee, or if the OCCC determines that any included costs are not reasonable, then the OCCC may require the seller to provide additional information, or the OCCC may determine that the amount is unreasonable. The review may result in a determination of the maximum amount of the documentary fee that a specific seller may charge.

(6) Restitution and order to lower documentary fee. If a seller violates this subsection by charging a documentary fee over $150 that is not supported by a complete cost analysis or that includes costs that are not reasonable, then the OCCC may order the seller to provide restitution to affected buyers and lower its documentary fee prospectively. For each buyer, the restitution for violating this subsection will not exceed the amount of the documentary fee the seller charged or received, minus $150, minus other restitution paid under subsection (c)(6) - (7) of this section. In addition, the OCCC may order a seller to cease charging a documentary fee greater than $50 for a specified period of time if the seller violates this subsection.

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SUBCHAPTER C. INSURANCE AND DEBT CANCELLATION AGREEMENTS

7 TAC §84.309

Statutory Authority

The new rule is adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The adopted fee in §84.309(c) is authorized under Texas Finance Code, §14.107, which authorizes the commission to establish reasonable and necessary fees for carrying out the commissioner's powers and duties under Chapter 348.

The statutory provisions affected by the adopted new rule are contained in Texas Finance Code, Chapter 348.

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SUBCHAPTER F. LICENSING

7 TAC §§84.601, 84.602, 84.604, 84.605, 84.607, 84.610, 84.611, 84.613

Statutory Authority

The amendments and new rules are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The adopted amendments to §84.611(e) are authorized under Texas Finance Code, §14.107, which authorizes the commission to establish reasonable and necessary fees for carrying out the commissioner's powers and duties under Chapter 348.

The statutory provisions affected by the adopted rule changes are contained in Texas Finance Code, Chapter 348.

§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).

(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, §348.415. 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), 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 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)(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);

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

(3) errors or incomplete information in the license application;

(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

(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 adoption and found it to be a valid exercise of the agency's legal authority.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7621

7 TAC §84.604

Statutory Authority

The repeal is adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions affected by the adopted repeal are contained in Texas Finance Code, Chapter 348.

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7 TAC §84.613, §84.614

Statutory Authority

The repeals are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions affected by the adopted repeals are contained in Texas Finance Code, Chapter 348.

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SUBCHAPTER G. EXAMINATIONS

7 TAC §84.708, §84.709

Statutory Authority

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 348.

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SUBCHAPTER H. RETAIL INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §§84.804, 84.808, 84.809

Statutory Authority

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 348.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

The State Board of Education (SBOE) adopts the repeal of §§66.1, 66.7, 66.10, 66.22, 66.24, 66.28, 66.33, 66.39, 66.42, 66.45, 66.48, 66.51, 66.54, 66.57, 66.60, 66.73, 66.78, and 66.79, amendments to §§66.4, 66.21, 66.27, 66.30, 66.36, 66.63, 66.66, 66.67, 66.72, 66.75, 66.81, 66.101, 66.104, 66.105, and 66.107, and new §§66.10, 66.15, 66.28, 66.29, 66.39, 66.41-66.43, and 66.73, concerning instructional materials. The repeal of §§66.1, 66.7, 66.10, 66.22, 66.24, 66.28, 66.33, 66.39, 66.42, 66.45, 66.48, 66.51, 66.54, 66.57, 66.60, 66.73, 66.78, and 66.79, amendments to §§66.4, 66.27, 66.36, 66.63, 66.66, 66.67, 66.72, 66.75, 66.81, 66.101, and 66.107, and new §§66.39, 66.41-66.43, and 66.73 are adopted without changes to the proposed text as published in the December 18, 2015 issue of the *Texas Register* (40 TexReg 9030) and will not be republished. The amendments to §§66.21, 66.30, 66.104, and 66.105 and new §§66.10, 66.15, 66.28, and 66.29 are adopted with changes to the proposed text as published in the December 18, 2015 issue of the *Texas Register* (40 TexReg 9030). The rules address the state adoption and distribution of instructional materials, including general provisions and local operations. The adopted actions update rules related to state review and adoption of instructional materials as well as ordering and distribution of instructional materials.

REASONED JUSTIFICATION. The changing nature of instructional materials and changes in statute since the passage of Senate Bill 6, 82nd Texas Legislature, First Called Session, 2011, and legislation passed by the 84th Texas Legislature, 2015, necessitates updates to the SBOE rules regarding instructional materials. The adopted revisions to 19 TAC Chapter 66, Subchapters A-C, update and clarify the process for the review, adoption, and distribution of instructional materials. The adopted revisions include the repeal of a number of rules in order to reorganize the chapter and to remove provisions that are no longer necessary. Provisions that are still needed from the repealed rules have been added as new rules and as amendments to existing rules. Many of the adopted revisions are non-substantive and intended to make the Chapter 66 rules clearer and easier to follow. The adopted revisions include the following.

Adopted new §66.10 clarifies the process by which a complainant may allege violation of the Texas Education Code (TEC), §39.151, or a rule implementing that section. The adopted rule specifies the format of the complaint and creates a process for the commissioner of education to consider the complaint and make a recommendation to the SBOE for action on the complaint. The rule clarifies the contested case hearing process for a publisher against whom the SBOE seeks to assess an administrative penalty.

Adopted new §66.15 clarifies that the SBOE may assess an administrative penalty for a violation of the TEC, §31.151, or a rule implementing that provision. The adopted rule specifies certain conditions under which the violations of the TEC, §31.151, or rules adopted thereunder may be sanctioned and provides a safe harbor for publishers to come into compliance. The new section is necessary to provide greater clarity about how violations of the TEC, §31.151, will be cured or adjudicated and sanctioned and ensure adequate due process in addressing those alleged violations.

The adopted amendment to §66.21 adds to the rule the statutory requirements of the TEC, §31.022, which mandates certain minimum requirements for the instructional materials review and adoption cycle, and provides that the SBOE will consider the estimated expenditures required for new materials as part of the review and adoption process.

The adopted amendment to §66.27 provides that the SBOE will conduct an investigation into the need for new instructional materials after the adoption of revised Texas essential knowledge and skills (TEKS) and sets out options should the investigation result in determined need for instructional materials. The rule provides additional clarity about the procedural and substantive requirements for instructional materials proclamations to benefit both publishers and districts. The rule includes minimum requirements for accessibility of electronic materials by students with disabilities.

Additionally, the adoption specifies detailed requirements for a publisher offering materials for review and adoption. These requirements provide for transparency and clarity about the standards to which publishers will be held in compliance with the TEC, Chapter 31. The adoption also sets out requirements that a publisher who participates in the midcycle review must meet, including submission of samples to the SBOE. The adoption provides that, consistent with the TEC, the publisher must ensure compliance with certain minimum manufacturing standards. The adoption prescribes minimum standards for participation in the bidding process and review process, which include making the bid, ensuring accessibility of the item for review, payment of fees and costs, the provision of samples prior to adoption, and TEKS coverage.

Adopted new §66.29 contains specific requirements for a website that is used to meet the TEKS coverage in a state-adopted material. The rule requires that the content be monitored by the publisher to maintain TEKS coverage, keep the material updated, and be free from advertising. These requirements are necessary to make sure students are protected from unsafe website content and that the TEKS coverage remains aligned.

The adopted amendments to §66.30 and §66.36 set out additional procedural safeguards for eligibility, appointment, and conduct for members of the state instructional materials review panels in order to make sure qualified individuals are appointed to the panels and that the SBOE retains input into the process. These rules also address the training and conduct of the review panel members to help ensure a high-quality review process that is free from conflicts of interest. These include ethical standards and periods of prohibited contacts for review panel and SBOE members.

Adopted new §66.39 contains provisions governing the handling of electronic samples of instructional materials in a manner that maintains the integrity of the process and allows for public access.

Adopted new §66.41 and §66.43 addresses when content may be added during the review panel process and the public comment period. These rules update provisions taken from repealed rules to ensure the greatest clarity and transparency for the instructional materials adoption.

The adopted amendment to §66.81 requires publishers to offer components of instructional materials packages for individual sale.

The adopted amendment to §66.104 outlines the process for local selection of instructional materials.

The adopted amendment to §66.107 requires a school district board of trustees to require training of local personnel in use of the state online instructional materials adoption system, known as EMAT.

The adopted revisions include other clarifying and conforming amendments pursuant to the TEC, §31.003, to implement each of the requirements of the TEC, Chapter 31.

The following changes were made to the revisions to 19 TAC Chapter 66, Subchapters A-C, since published as proposed.

Language in §66.10(a) was changed to limit the complaints referenced in the section to be only those against materials adopted by the SBOE.

Language in §66.15(a) was changed to limit the penalties allowed by the section to only materials adopted by the SBOE.

Language in §66.15(f) was changed to limit the penalties allowed by the section to be applicable only to materials adopted by the SBOE and to provide a 60-day window of opportunity for publishers to avoid a penalty by correcting reported errors.

Language in §66.15(j) was changed to provide clarification regarding timelines and correct a grammatical error.

Language in §66.21(a) was changed to provide clarification regarding review and adoption of prekindergarten materials.

Language in §66.28(a) was changed to provide detail on the scope of the required accessibility audit and to require easy access to alternate formats used to meet accessibility standards.

Language in §66.28(d) was changed to clarify the requirement to provide individual component pricing and sales.

Language in §66.29(f) was changed to allow a publisher to collect user information if a fully executed data-sharing agreement with the district is in place.

Language in §66.30 was reorganized for greater clarity and to define "academic expert."

Language in §66.104 was changed to bring the section into alignment with Attorney General Opinion KP-0043.

Language in §66.105 was removed to bring the section into alignment with Attorney General Opinion KP-0043.

Technical edits were made throughout the subchapters to correct non-substantive typographical and grammatical errors.

The revisions to 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials, Subchapter A, General Provisions, Subchapter B, State Adoption of Instructional Materials, and Subchapter C, Local Operations, were approved by the SBOE for first reading and filing authorization at its November 20, 2015 meeting and for second reading and final adoption at its January 29, 2016 meeting.

SUMMARY OF COMMENTS AND RESPONSES. Following is a summary of the public comments received and the corresponding responses regarding the proposed revisions to 19 TAC Chapter 66, Subchapters A-C.

Comment. One publisher representative suggested an amendment to §66.21(a) to clarify the board's continued intent to call for and adopt prekindergarten systems.

Response. The SBOE agrees and took action to amend §66.21(a) to read, "The State Board of Education (SBOE) shall adopt a review and adoption cycle for instructional materials for prekindergarten and for elementary and secondary grade levels for each subject in the required curriculum."

Comment. One publisher representative and one district representative expressed concern that the restriction on publishers' collecting any information on users in proposed §66.29(f) unnecessarily limits the functionality of future e-text platforms.

Response. The SBOE agrees that limited student data collection should be allowed. In response to these comments, the SBOE took action to amend §66.29(f) to allow a publisher to collect user information if a fully executed data-sharing agreement with the district is in place.

Comment. One district representative suggested language in §69.29(f) be changed so that publishers of online instructional materials are allowed to add content simply by notifying the commissioner rather than through getting approval from the commissioner.

Response. The SBOE disagrees and determined the requirement that the commissioner review and approve all new content that is included in the current rule continues to be appropriate and made no changes to the language as proposed.

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§66.1, 66.7, 66.10

STATUTORY AUTHORITY. The repeals are adopted under the Texas Education Code (TEC), §7.102, which requires the State Board of Education (SBOE) to adopt rules related to the TEC, Chapter 31; TEC, §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials; TEC, §31.005, which authorizes open enrollment charter schools to instructional materials allotment and subjects them to the TEC, Chapter 31, as if they were a school district; TEC, §31.030, which requires the SBOE to adopt rules regarding used instructional materials and provide for administrative penalties; and TEC, §31.151, which authorizes the SBOE to impose a reasonable administrative penalty against a publisher or a manufacturer who knowingly violates the TEC, §31.151(a), and requires the SBOE to provide for a hearing to be held to determine whether a penalty is to be imposed and, if so, the amount of the penalty.

CROSS REFERENCE TO STATUTE. The repeals implement the Texas Education Code, §§7.102, 31.003, 31.005, 31.030, and 31.151.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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19 TAC §§66.4, 66.10, 66.15

STATUTORY AUTHORITY. The amendment and new sections are adopted under the Texas Education Code (TEC), §7.102, which requires the State Board of Education (SBOE) to adopt rules related to the TEC, Chapter 31; TEC, §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials; TEC, §31.005, which authorizes open enrollment charter schools to instructional materials allotment and subjects them to the TEC, Chapter 31, as if they were a school district; TEC, §31.030, which requires the SBOE to adopt rules regarding used instructional materials and provide for administrative penalties; and TEC, §31.151, which authorizes the SBOE to impose a reasonable administrative penalty against a publisher or a manufacturer who knowingly violates the TEC, §31.151(a), and requires the SBOE to provide for a hearing to be held to determine whether a penalty is to be imposed and, if so, the amount of the penalty.

CROSS REFERENCE TO STATUTE. The amendment and new sections implement the Texas Education Code, §§7.102, 31.003, 31.005, 31.030, and 31.151.

§66.10. Procedures Governing Violations of Statutes--Official Complaints.

(a) An official complaint alleging a violation of the Texas Education Code (TEC), §31.151, or a rule implementing that section, for an instructional material adopted by the State Board of Education (SBOE) shall be filed with the commissioner of education. An official complaint shall be made on a form prescribed by the commissioner of education.

(b) The complaint form shall require:

(1) a citation to the specific provision under the TEC, §31.151, or rule for which a violation is alleged;

(2) identification of the publisher or manufacturer responsible for the alleged violation;

(3) facts showing that a likely violation has occurred such as identification of the particular instructional material and page number where each alleged error occurs; and

(4) signature and contact information of the person complaining of the alleged violation.

(c) If a complainant fails to submit a properly completed complaint form after being given an opportunity to make corrections, the

allegations will not be reviewed by the commissioner of education and will not be submitted to the SBOE.

(d) An allegation of a factual error in instructional materials currently under consideration by the SBOE for adoption may not be submitted as an official complaint but must be submitted to the SBOE in accordance with relevant provisions in this chapter.

(e) After investigating an official complaint or an allegation brought forward by the Texas Education Agency (TEA) staff, the commissioner of education shall recommend to the SBOE in writing whether to hold a hearing concerning an administrative penalty under the TEC, §31.151.

(f) The commissioner of education shall provide the recommendation to the complainant, if any; the publisher or manufacturer accused of the alleged violation; and members of the SBOE.

(g) If the SBOE receives a recommendation under subsection (f) of this section, the SBOE chair may include the item for consideration on a future SBOE agenda. If the item is placed on the agenda, TEA staff will present the recommendation.

(h) Upon a vote by the SBOE that a hearing shall be held to determine whether a penalty should be assessed, a hearing will be heard before the State Office of Administrative Hearing in accordance with Chapter 157 of this title (relating to Hearings and Appeals). The SBOE shall request either the commissioner of education or the Attorney General to present the case before the State Office of Administrative Hearings.

(i) If the parties before the State Office of Administrative Hearings come to an agreement for settling the case, the issue of whether the agreement should be accepted will be placed on a future SBOE agenda.

§66.15. Administrative Penalty.

(a) Under the Texas Education Code (TEC), §31.151(b), the State Board of Education (SBOE) may assess a reasonable administrative penalty against a publisher or manufacturer found in violation of a provision of the TEC, §31.151(a). The SBOE shall assess an administrative penalty under this section only for a violation based upon an instructional material adopted by the SBOE. An administrative penalty shall be assessed only after the SBOE has granted the publisher or manufacturer a hearing in accordance with the TEC, §31.151; the Administrative Procedure Act; Chapter 157, Subchapter A, of this title (relating to General Provisions for Hearings Before the State Board of Education); and this chapter.

(b) The SBOE may assess an administrative penalty against a publisher or manufacturer who violates the TEC, §31.151(a)(1), or a rule implementing that provision, including assessing an administrative penalty against a publisher or manufacturer who offers an instructional material in this state at a higher price than that offered to any other state, public school, or school district in the United States. A publisher or manufacturer does not violate this provision if within 60 days of the sale at a higher price, the publisher or manufacturer provides a refund in the incremental amount of the lower price compared to the purchase price to all Texas public schools that previously purchased the same instructional material at a higher price and enters into a written agreement with the Texas Education Agency (TEA) to offer the instructional material at the lower price to any Texas public school. An action under this subsection may only be taken for differential pricing that occurs between the time when a public school may start entering orders for a particular school year until the time when a public school may start entering orders for the subsequent school year.

(c) The SBOE may assess an administrative penalty against a publisher or manufacturer who violates the TEC, §31.151(a)(2), or a rule implementing that provision. A publisher or manufacturer does not violate this provision if within 60 days of the sale at a lower price, the publisher or manufacturer provides a refund in the incremental amount of the lower price compared to the original purchase price to all Texas public schools that previously purchased the same instructional material. An action under this subsection may only be taken for differential pricing that occurs between the time when a public school may start entering orders for a particular school year until the time when a public school may start entering orders for the subsequent school year.

(d) The SBOE may assess an administrative penalty against a publisher or manufacturer who violates the TEC, §31.151(a)(3), or a rule implementing that provision. A publisher or manufacturer does not violate this provision if within 60 days of dissemination of instructional materials or ancillary items free of charge, the publisher or manufacturer provides a refund of the purchase to all Texas public schools that previously purchased the same instructional material and enters into a written agreement with the TEA that the ancillary items will be provided free of charge if any Texas public school buys the instructional material at issue.

(e) The SBOE may assess an administrative penalty against a publisher or manufacturer who violates the TEC, §31.151(a)(4), or a rule implementing that provision. A publisher or manufacturer does not violate this provision if within 60 days of dissemination of instructional materials of higher quality, the publisher or manufacturer provides new copies of the higher quality instructional material at no charge or, with the public school consent, a refund equivalent to the price of the lower quality material to all Texas public schools that previously purchased the same instructional material.

(f) The SBOE may assess an administrative penalty against a publisher or manufacturer who violates the TEC, §31.151(a)(4) or (9), or a rule implementing those provisions, including:

(1) an administrative penalty for selling instructional materials with factual errors. The SBOE may assess an administrative penalty against a publisher or manufacturer of instructional materials who sells instructional materials that have been adopted by the SBOE and contain factual errors unless, within 60 days of knowledge of the factual error, the publisher or manufacturer corrects the factual error, including revising web-based instructional materials, providing corrective materials to public schools that have received material containing the factual error, and ensuring no further distribution of materials occurs without correction of the error; or

(2) an administrative penalty for failure to correct factual errors. The SBOE may assess an administrative penalty against a publisher or manufacturer who fails to correct a factual error, including:

(A) failure to correct a factual error identified in the list of corrections submitted by a publisher under §66.28(c)(11) of this title (relating to Requirements for Publisher Participation);

(B) failure to correct a factual error identified in the report of the commissioner of education under §66.63(e) of this title (relating to Report of the Commissioner of Education) and required by the SBOE; or

(C) failure to correct a factual error identified and required by the SBOE prior to the adoption of the instructional material.

(g) For purposes of this section:

(1) a factual error shall be defined as a verified error of fact or any error that would interfere with student learning. The context, including the intended student audience and grade level appropriateness, shall be considered;

(2) a factual error repeated in a single item or contained in both the student and teacher components of instructional material

shall be counted once for the purpose of determining penalties. An identical error in materials with multiple components and formats shall be counted as one error; and

(3) a penalty may be assessed for failure to correct a factual error identified in the list of corrections submitted by a publisher under §66.28(c)(11) of this title or for failure to correct a factual error identified in the report of the commissioner of education under §66.63(a) of this title and required by the SBOE. The publisher shall identify errata in an appropriate manner.

(h) For purposes of subsection (f)(2) of this section, a penalty of $5,000 shall be assessed for each failure to correct a factual error:

(1) after the deadline established in the proclamation by which publishers must have submitted corrected samples of adopted instructional materials for violations of subsection (f)(2)(A) of this section; or

(2) prior to distribution to public schools after the SBOE has identified the factual error for violations of subsection (f)(2)(B) and (C) of this section.

(i) The SBOE may assess an administrative penalty against a publisher or manufacturer who violates the TEC, §31.151(a)(5), or a rule implementing those provisions.

(j) The SBOE may assess an administrative penalty against a publisher or manufacturer who violates the TEC, §31.151(a)(6), (7), or (8), or a rule implementing those provisions, including:

(1) a penalty for failure to deliver adopted instructional materials, including teacher components, in a timely manner or in the quantities the school district or open-enrollment charter school is eligible to receive as specified in the publisher's bid; and

(2) a penalty for failure to deliver adopted instructional materials, including teacher components, in accordance with provisions in the contracts if the failure extends beyond 45 days.

(k) The SBOE may assess an administrative penalty against a publisher or manufacturer who fails to maintain a website or provide a suitable alternative for conveying the information in the website, or who otherwise fails to meet the requirements of §66.29 of this title (relating to Websites in State-Adopted Instructional Materials).

(l) The SBOE may, if circumstances warrant, waive or vary penalties contained in this section for first or subsequent violations based on the seriousness of the violation, any history of a previous violation or violations, the amount necessary to deter a future violation, any effort to correct the violation, and any other matter justice requires.

(m) Each affected publisher shall issue credit to the TEA in the amount of any penalty imposed under the provisions of this section. When circumstances warrant it, the TEA is authorized to require payment of penalties in cash within ten days. Each affected publisher who pays a fine for failure to deliver adopted instructional materials in a timely manner will not be subject to the liquidated damages provision in the publisher's contract for the same failure to deliver adopted instructional materials in a timely manner.

(n) All administrative penalties shall be credited to the public schools instructional materials allotment funds under the TEC, §31.0212.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. STATE ADOPTION OF INSTRUCTIONAL MATERIALS

19 TAC §§66.21, 66.27 - 66.30, 66.36, 66.39, 66.41 - 66.43, 66.63, 66.66, 66.67, 66.72, 66.73, 66.75, 66.81

STATUTORY AUTHORITY. The amendments and new sections are adopted under the Texas Education Code (TEC), §7.102, which requires the State Board of Education (SBOE) to adopt rules related to the TEC, Chapter 31; TEC, §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials; TEC, §31.005, which authorizes open enrollment charter schools to instructional materials allotment and subjects them to the TEC, Chapter 31, as if they were a school district; TEC, §31.022, which requires the SBOE to adopt a review and adoption cycle for instructional materials in prekindergarten through Grade 12 and establishes priorities for that cycle. The statute requires the SBOE to adopt rules to provide for a full and complete investigation of instructional materials for each subject in the foundation curriculum every eight years and the enrichment curriculum as appropriate. TEC, §31.022, also establishes requirements for the SBOE to meet regarding issuing proclamations; TEC, §31.0221, which requires the SBOE to adopt rules for the midcycle review and adoption of instructional materials for a subject for which materials are not currently under review as part of the regular adoption cycle. The rules must require participating publishers to pay a fee to cover costs of the review, to enter into an appropriate contract that ends at the same time as other products adopted for that subject area, and to commit to providing adopted materials in the agreed-upon manner; TEC, §31.023, which requires the SBOE to adopt a list of instructional materials that meet applicable physical specifications and contain material covering at least half of the applicable Texas essential knowledge and skills (TEKS) in the student version and in the teacher version; TEC, §31.024, which requires the SBOE to make decisions on the adopted list by majority vote and to provide a list of adopted materials no later than December 1 of the year prior to the year the materials are expected to be in classrooms; TEC, §31.0241, which requires the SBOE to include open-source materials produced by eligible institutions on the adopted list if they meet certain requirements; TEC, §31.0242, which prescribes time periods and duties for the SBOE with regard to review of open source materials; TEC, §31.026, which requires the SBOE to execute contracts with publishers of adopted materials that coincide with the board's review cycle and that specify a price fixed for the term of the contract that does not exceed the lowest price paid by any other state or any school or school district; TEC, §31.0261, which allows the SBOE to execute contracts for the printing of adopted open-source instructional materials and requires that the contracts allow a school district to purchase printed copies of those materials; and TEC, §31.035, which allows the SBOE to adopt supplemental instructional materials that are not

on the adopted list if the material covers one or more primary focal points or topics of a subject in the required curriculum, is not designed to serve as the only instructional material for the course, meets applicable physical specifications, and is free from factual errors. The statute requires the SBOE to identify the TEKS that are covered by the supplemental instructional material and requires the material to comply with the review and adoption cycle provisions.

CROSS REFERENCE TO STATUTE. The amendments and new sections implement the Texas Education Code, §§7.102, 31.003, 31.005, 31.022, 31.0221, 31.023, 31.024, 31.0241, 31.0242, 31.026, 31.0261, and 31.035.

§66.21. Review and Adoption Cycle.

(a) The State Board of Education (SBOE) shall adopt a review and adoption cycle for instructional materials for prekindergarten and for elementary and secondary grade levels for each subject in the required curriculum.

(b) In adopting the cycle, the SBOE:

(1) is not required to review and adopt instructional materials for all grade levels in a single year; and

(2) shall give priority to instructional materials in the following subjects:

(A) foundation curriculum subjects for which the essential knowledge and skills have been substantially revised and for which assessment instruments are required under the Texas Education Code (TEC), Chapter 39, Subchapter B, including career and technical education courses that satisfy foundation curriculum requirements as provided by the TEC, §28.002(n);

(B) foundation curriculum subjects for which the essential knowledge and skills have been substantially revised, including career and technical education courses that satisfy foundation curriculum requirements as provided by the TEC, §28.002(n);

(C) foundation curriculum subjects not described by subparagraph (A) or (B) of this paragraph, including career and technical education courses that satisfy foundation curriculum requirements as provided by the TEC, §28.002(n); and

(D) enrichment curriculum subjects.

(3) The adoption cycle for subjects in the foundation curriculum shall be organized so that instructional materials for not more than one-fourth of the subjects in the foundation curriculum are reviewed each biennium. A full and complete investigation of instructional materials for each subject in the foundation curriculum shall occur every eight years unless content of instructional materials for a subject is sufficiently current. Estimated expenditures and historical or expected legislative appropriations shall be considered when determining placement of subjects in the cycle.

(4) The adoption cycle for subjects in the enrichment curriculum shall be organized so that placement of a subject in the cycle is based on the need for up-to-date materials that align to revised Texas essential knowledge and skills or the addition of new courses. Estimated expenditures and historical or expected legislative appropriations shall be considered when determining placement of subjects in the cycle.

§66.28. Requirements for Publisher Participation.

(a) A publisher who intends to offer instructional materials for review shall comply with product standards and specifications.

(1) Hard copy instructional materials adopted by the State Board of Education (SBOE) shall comply with the standards in the latest edition of Manufacturing Standards and Specifications for Textbooks approved by the National Advisory Commission on Textbook Specifications, as applicable. If the commissioner of education determines that good cause exists, the commissioner may approve an exception for a specific portion or portions of this requirement.

(2) A publisher who offers electronic instructional materials must provide a report for each electronic component that verifies that the components follow Web Content Accessibility (WCAG) 2.0 AA standards and technical standards required by the Federal Rehabilitation Act, Section 508. The report must be prepared by an independent third party and be based on an audit testing the accessibility of a random sampling of pages as outlined in each proclamation. The number of pages to be audited to meet the requirements in the proclamation shall be determined by the publisher.

(3) A publisher who provides access to materials to students with disabilities through an alternate format shall include a link to that material on the entrance page of the main product.

(4) Materials delivered online shall meet minimum web-based standards.

(5) A publisher shall file a statement certifying instructional materials submitted for consideration will meet applicable product standards and specifications if adopted. Each statement must be made in a format designated by the commissioner of education, signed by a company official, and filed on or before the deadline specified in the schedule of adoption procedures in each proclamation.

(6) If, during the contract period, the commissioner of education determines that any adopted instructional materials have faulty manufacturing characteristics or are made of inferior materials, the materials shall be replaced by the publisher without cost to the state.

(b) A publisher who intends to offer instructional materials for adoption shall submit a statement of intent to bid on or before the date specified in the schedule of adoption procedures.

(1) The statement of intent to bid shall be submitted in a format designated by the commissioner of education.

(2) A publisher shall indicate in the statement of intent to bid the percentage of Texas essential knowledge and skills that the publisher believes are sufficiently covered in each instructional materials submission.

(3) A publisher shall specify hardware or special equipment needed to review any item included in an instructional materials submission.

(4) Additions to a publisher's statement of intent to bid shall not be accepted after the deadline for filing statements of intent to bid, except as allowed in the schedule of adoption procedures included in a proclamation.

(5) A publisher who intends to offer instructional materials for midcycle review shall submit a statement of intent to bid and price information on or before the date specified in the schedule of adoption procedures under midcycle review. The statement of intent to bid must:

(A) specify the manner in which instructional materials will be provided to school districts as specified in §66.27(k)(2) of this title (relating to Proclamation, Public Notice, and Schedule for Adopting Instructional Materials); and

(B) include payment of the fee for review of instructional materials submitted for midcycle review.

(c) A publisher who intends to offer instructional materials for review shall comply with the following requirements for providing pre-adoption samples.

(1) Complete electronic samples of student and teacher components of instructional materials shall be provided to the Texas Education Agency (TEA) and the 20 regional education service centers (ESCs) on or before the date specified in the schedule of adoption procedures in a proclamation. Samples submitted for review shall be complete versions of the final product and must include all content intended to be in the final product, not just the content identified in the correlations. Samples of electronic products must be fully functional for review purposes and meet any other specifications identified in the proclamation.

(2) A publisher of instructional materials submitted for adoption shall make available samples that meet the requirements of subsection (a) of this section to an SBOE member upon that member's request, beginning on the date the publishers are required to submit their samples to the TEA.

(3) The TEA may request additional samples if they are needed. These samples shall be available for public review. Publishers of Internet-based instructional content submitted for review shall provide appropriate information, such as locator and login information and passwords, required to ensure public access to their programs throughout the review period.

(4) If the commissioner of education determines that good cause exists, the commissioner may extend the deadline for filing samples with ESCs. At its discretion, the SBOE may remove from consideration any materials proposed for adoption that were not properly supplied to the ESCs, the TEA, or SBOE members.

(5) A publisher shall provide a complete description of all student and teacher components of an instructional materials submission along with the required electronic sample.

(6) On request of a school district, a publisher shall provide an electronic sample of submitted instructional materials and may also provide print sample copies. A publisher of prekindergarten materials is not required to submit electronic samples of adopted prekindergarten instructional materials. Samples of adopted prekindergarten materials must match the format of the products to be provided to schools upon ordering.

(7) A publisher of prekindergarten materials is not required to submit electronic samples of submitted prekindergarten instructional materials. Samples of submitted prekindergarten materials must match the format of the products to be provided to schools upon ordering.

(8) One sample copy of each student and teacher component of an instructional materials submission shall be provided for each member of the appropriate state review panel in accordance with instructions provided by the TEA. Publishers have the option to file with the TEA print samples, electronic samples in an open file format or closed format, or galley proofs. An electronic sample of print instructional materials must be offered in a format that simulates the print or "view only" version and that does not contain links to external sources. To ensure that the evaluations of state review panel members are limited to student and teacher components submitted for adoption, publishers shall not provide ancillary materials or descriptions of ancillary materials to state review panel members.

(9) On or before the deadline established in the schedule of adoption procedures, publishers shall submit correlations of instructional materials submitted for review with essential knowledge and skills required by the proclamation. Correlations shall be provided for materials designed for student use and materials designed for teacher use and must identify evidence of each student expectation addressed in the ways specified in §66.27(h) of this title. Correlations shall be submitted in a format designated by the commissioner of education.

(10) The TEA, ESCs, and participating publishing companies shall work together to ensure that hardware or special equipment necessary for review of any item included in a student and/or teacher component of an instructional materials submission is available in each ESC. Participating publishers may be required to lend such hardware or special equipment to any member of a state review panel who does not have access to the necessary hardware or special equipment.

(11) A publisher shall provide a list of all corrections required to be made to each student and teacher component of an instructional materials submission to bring them into compliance with applicable laws, rules, or the proclamation. The list must be in a format designated by the commissioner of education and filed on or before the deadline specified in the schedule of adoption procedures. If no corrections are necessary, the publisher shall file a statement to that effect in a format designated by the commissioner of education on or before the deadline in the schedule for submitting the list of corrections. On or before the deadline for submitting lists of corrections, publishers shall submit certification that all instructional materials have been edited for accuracy, content, and compliance with requirements of the proclamation.

(12) One complete electronic sample copy in an open file format or closed format of each student and teacher component of adopted instructional materials that incorporate all corrections required by the SBOE shall be filed with the commissioner of education on or before the date specified in the schedule of adoption procedures. The complete sample copies filed with the TEA must be representative of the final program. In addition, each publisher shall file an affidavit signed by an official of the company verifying that all corrections required by the commissioner of education and SBOE have been made.

(13) Publishers participating in the adoption process are responsible for all expenses incurred by their participation. The state does not guarantee return of sample instructional materials.

(d) A publisher who intends to offer instructional materials for adoption shall comply with the following bid requirements.

(1) Publishers shall file official bids with the commissioner of education according to the schedule of adoption procedures and in a manner designated by the commissioner.

(2) The official bid price of an instructional materials submission may exceed the price included with the statement of intent to bid filed under subsection (b) of this section.

(3) The official bid filed by a publisher shall include separate prices for each item included in an instructional materials submission. A publisher shall guarantee that individual items included in the student and/or teacher component are available for local purchase at the individual prices listed for the entire contract period.

(4) A publisher may submit supplemental bids with new package options or lower prices for existing packages or components according to the schedule of adoption procedures included in the proclamation. Supplemental bids may not be submitted for prices higher than were provided in the initial bids.

(5) Each instructional material or ancillary material that is offered as part of a bundle must also be available for purchase individually.

(e) A publisher who intends to offer instructional materials for adoption shall comply with the following additional requirements.

(1) A publisher shall submit to the TEA a signed affidavit including the following:

(A) certification that each individual whose name is listed as an author or contributor of the instructional materials contributed to the development of the instructional materials; and

(B) a general description of each author's or contributor's involvement in the development of the instructional materials.

(2) Student materials offered for possible adoption may include consumable components in subjects and grade levels in which consumable materials are not specifically called for in the proclamation. In such cases, publishers must meet the following conditions.

(A) The per student price of the materials must include the cost of replacement copies of consumable student components for the full term of the adoption and contract, including any extensions of the contract terms, but for no more than 12 years. The offer must be set forth in the publisher's official bid.

(B) The publisher's official bid shall contain a clear explanation of the terms of the sale, including the publisher's agreement to supply consumable student materials for the duration of the contract and extensions as noted in subparagraph (A) of this paragraph.

(C) The publisher and the school district shall determine the manner in which consumable student materials are supplied beyond the initial order year.

(f) A publisher may not submit instructional materials for review that have been authored or contributed to by a current employee of the TEA.

(g) A publisher who intends to offer instructional materials for adoption shall comply with additional requirements included in a proclamation related to submission of instructional materials for adoption.

§66.29. Websites in State-Adopted Instructional Materials.

(a) This section applies only to a website that is a component used to address Texas essential knowledge and skills as part of a state-adopted product.

(b) A publisher shall monitor, update, and maintain any in-house and third party electronic, web-based, or online products furnished as part of the instructional materials specified in the contract for the period determined by the State Board of Education (SBOE).

(c) If, at any time during the contract period, the commissioner of education determines in a hearing that electronic, web-based, or online instructional materials furnished and supplied under the terms of a contract have faulty manufacturing characteristics or display dated or inferior information that is not in alignment with the Texas essential knowledge and skills that were in place at the time of the materials' original adoption, the instructional materials or information shall be replaced with complying materials or information by the publishers without cost to the state.

(d) Electronic, web-based, or online instructional materials may not be altered in any way that would remove or change content that was used to qualify the product for adoption in the curriculum without prior SBOE approval.

(e) The publisher may not allow advertising of any type to be placed in or associated with the materials.

(f) The publisher may not add any Internet links to the materials without the approval of the commissioner of education, will not redirect any user accessing the web-based or online instructional materials to other Internet or electronic sites that are not directly related to the content, and may not collect any information about the user or computer accessing the materials that would allow determination of personal information, including email addresses, without a fully executed data-sharing agreement between the publisher and the local school district that protects user data and limits its use to permitted educational purposes only.

§66.30. State Review Panels: Eligibility and Appointment.

(a) The commissioner of education shall determine the number of review panels needed to review instructional materials under consideration for adoption, the number of persons to serve on each panel, and, subject to this section, the process for selecting panel members.

(b) As determined by this section, panel members shall serve with the advice and consent of the member from whose district the panel member resides.

(c) The commissioner of education shall solicit nominations for possible appointees to state review panels from the State Board of Education (SBOE), school districts, open-enrollment charter schools, and educational organizations in the state. Nominations may be accepted from any Texas resident. Nominations shall not be made by or accepted from any publishers; hardware or software providers; authors; depositories; agents for publishers, hardware or software providers, authors, or depositories; or any person who holds any official position with a publisher, hardware or software provider, author, depository, or agent.

(d) A person nominated to serve on a state review panel shall disclose in any nomination or application, in a manner designated by the commissioner of education, his or her residence and whether currently or at any time in the 36 months preceding the appointment the person:

(1) was employed by or received funds from any individual or entity affiliated with a publishing company involved in or connected to the adoption of instructional materials;

(2) owned or controlled any interest valued at more than $5,000 in a privately owned publishing company or an entity receiving funds from a publishing company involved in or connected to the adoption of instructional materials or had direct ownership of stock of a publicly traded company involved in or connected to the adoption of instructional materials; or

(3) was employed by an institution of higher education that has submitted open-source instructional materials or is a publisher of instructional materials.

(e) The commissioner of education shall propose appointments to state review panels that, to the extent possible, as determined by the commissioner, include the following:

(1) individuals nominated by SBOE members;

(2) individuals representing a diverse mixture of gender, race, and SBOE districts;

(3) a majority of members with content expertise and experience;

(4) academic experts in each subject area for which instructional materials are being considered, giving priority to content-relevant educators and professors; and

(5) educators, parents, business and industry representatives, and employers.

(f) For purposes of this section, an "academic expert" is a person who:

(1) is a public school teacher with at least ten years of classroom teaching experience; or

(2) has at least a master's degree in the subject area; or

(3) is a professor at an accredited four-year institution of higher education in Texas.

(g) The commissioner of education shall notify the SBOE of the proposed appointments. The commissioner shall assign each appointee to the SBOE district in which he or she resides.

(h) An SBOE member may reject the proposed appointment of a panel member representing that member's SBOE district by notifying the commissioner via electronic mail within seven days of receiving the proposed appointment list. Failure to reject a proposed appointment within seven days constitutes consent for the appointment.

(i) After close of the seven-day period under subsection (h) of this section, the commissioner may propose additional members if necessary. The commissioner shall provide to the SBOE member who represents the district of residence for each additional proposed panel member the opportunity for review of additional members in accordance with the time period and rejection rules under subsection (h) of this section. The SBOE shall be notified of finalized appointments made by the commissioner of education to state review panels. The final list of appointees, their roles, and who nominated them shall be given to each member of the SBOE no later than the first public meeting following the finalization of the panels.

(j) The commissioner of education shall inform nominees who are not appointed to a state review panel that all members of the public may review instructional materials and give input during the public comment period.

(k) The role of each appointee shall be designated by the commissioner of education and disclosed to all appointees on each panel.

(l) Members of a state review panel may be removed at the discretion of the commissioner of education at any time prior to the completion of the review.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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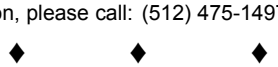

19 TAC §§66.22, 66.24, 66.28, 66.33, 66.39, 66.42, 66.45, 66.48, 66.51, 66.54, 66.57, 66.60, 66.73, 66.78, 66.79

STATUTORY AUTHORITY. The repeals are adopted under the Texas Education Code (TEC), §7.102, which requires the State Board of Education (SBOE) to adopt rules related to the TEC, Chapter 31; TEC, §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials; TEC, §31.005, which authorizes open enrollment charter schools to instructional materials allotment and subjects them to the TEC, Chapter 31, as if they were a school district; TEC, §31.022, which requires the SBOE to adopt a review and adoption cycle for instructional materials in prekindergarten through Grade 12 and establishes priorities for that cycle. The statute requires the SBOE to adopt rules to provide for a full and complete investigation of instructional materials for each subject in the foundation curriculum every eight years and the enrichment curriculum as appropriate. TEC, §31.022, also establishes requirements for the SBOE to meet regarding issuing proclamations; TEC, §31.0221, which requires the SBOE to adopt rules for the midcycle review and adoption of instructional materials for a subject for which materials are not currently under review as part of the regular adoption cycle. The rules must require participating publishers to pay a fee to cover costs of the review, to enter into an appropriate contract that ends at the same time as other products adopted for that subject area, and to commit to providing adopted materials in the agreed-upon manner; TEC, §31.023, which requires the SBOE to adopt a list of instructional materials that meet applicable physical specifications and contain material covering at least half of the applicable Texas essential knowledge and skills (TEKS) in the student version and in the teacher version; TEC, §31.024, which requires the SBOE to make decisions on the adopted list by majority vote and to provide a list of adopted materials no later than December 1 of the year prior to the year the materials are expected to be in classrooms; TEC, §31.0241, which requires the SBOE to include open-source materials produced by eligible institutions on the adopted list if they meet certain requirements; TEC, §31.0242, which prescribes time periods and duties for the SBOE with regard to review of open source materials; TEC, §31.026, which requires the SBOE to execute contracts with publishers of adopted materials that coincide with the board's review cycle and that specify a price fixed for the term of the contract that does not exceed the lowest price paid by any other state or any school or school district; TEC, §31.0261, which allows the SBOE to execute contracts for the printing of adopted open-source instructional materials and requires that the contracts allow a school district to purchase printed copies of those materials; and TEC, §31.035, which allows the SBOE to adopt supplemental instructional materials that are not on the adopted list if the material covers one or more primary focal points or topics of a subject in the required curriculum, is not designed to serve as the only instructional material for the course, meets applicable physical specifications, and is free from factual errors. The statute requires the SBOE to identify the TEKS that are covered by the supplemental instructional material and requires the material to comply with the review and adoption cycle provisions.

CROSS REFERENCE TO STATUTE. The repeals implement the Texas Education Code, §§7.102, 31.003, 31.005, 31.022, 31.0221, 31.023, 31.024, 31.0241, 31.0242, 31.026, 31.0261, and 31.035.

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SUBCHAPTER C. LOCAL OPERATIONS

19 TAC §§66.101, 66.104, 66.105, 66.107

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), TEC, §7.102, which requires the State Board of Education (SBOE) to adopt rules related to the TEC, Chapter 31; TEC, §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials; TEC, §31.004, which requires annual certification to the SBOE and Commissioner that the district or open enrollment charter provides instructional materials to cover the TEKS; TEC, §31.005, which authorizes open enrollment charter schools to instructional materials allotment and subjects them to the TEC, Chapter 31, as if they were a school district; TEC, §31.027, which establishes requirements for the provision of samples to school districts and charters; TEC, §31.030, which requires the SBOE to adopt rules regarding used instructional materials and provide for administrative penalties; TEC, §31.101, which requires a school district board of trustees or a governing body of an open-enrollment charter school to notify the SBOE of instructional materials selected; TEC, §31.103, which prescribes instructional materials requisition procedures and requirements for school districts and open enrollment charters; and TEC, §31.104, which prescribes requirements for schools districts and charters on the distribution and handling of instructional materials.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §§7.102, 31.003, 31.004, 31.005, 31.027, 31.030, 31.101, 31.103, and 31.104.

§66.104. Selection of Instructional Materials by School Districts.

(a) Each local board of trustees of a school district or governing body of an open-enrollment charter school shall select instructional materials in an open meeting as required by Texas Government Code, Chapter 551, including public notice.

(b) A school district or an open-enrollment charter school may requisition instructional materials on the list adopted under the Texas Education Code, §31.023, for grades above the grade level in which the student is enrolled.

(c) Adopted instructional materials shall be supplied to a student in special education classes as appropriate to the level of the student's ability and without regard to the grade for which the instructional material is adopted or the grade in which the student is enrolled.

(d) School districts or open-enrollment charter schools shall not be reimbursed from state funds for expenses incurred in local handling of instructional materials.

§66.105. Certification by School Districts.

(a) Prior to the beginning of each school year, each school district and open-enrollment charter school shall submit to the State Board of Education (SBOE) and commissioner of education certification that for each subject in the required curriculum under the Texas Education Code, §28.002, other than physical education, and each grade level, the district or charter school provides each student with instructional materials that cover all elements of the essential knowledge and skills adopted by the SBOE. The certification shall be submitted in a format approved by the commissioner of education and can be based on both state-adopted and non-state-adopted materials.

(b) The certifications shall be ratified by local school boards of trustees or governing bodies in public, noticed meetings.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER HH. MIXED BEVERAGE TAXES

34 TAC §3.1002

The Comptroller of Public Accounts adopts an amendment to §3.1002, concerning mixed beverage sales tax, without changes to the proposed text as published in the March 11, 2016, issue of the *Texas Register* (41 TexReg 1822). This section implements Senate Bill 31, 84th Legislature, 2015, which added Tax Code, §151.310(c-1) to provide an exemption from sales and use tax for volunteer fire departments' fundraising sales and auctions, effective May 28, 2015. Although Senate Bill 31 did not amend Tax Code, Chapter 183, Subchapter B-1 (Mixed Beverage Sales Tax), pursuant to Tax Code, §183.043 (Applicability of Other Law), mixed beverage sales tax is administered, collected, and enforced in the same manner as the tax under Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax) is administered, collected, and enforced. Therefore, the exemption from collecting sales tax on fundraising sales or auctions for volunteer fire departments in Tax Code, §151.310(c-1) also applies to the collection of mixed beverage sales tax.

Subsection (f)(5) is amended to add language that the exemption is effective May 28, 2015, and that a previous exemption from mixed beverage sales tax at fundraising sales and auctions expired on September 1, 2014.

No comments were received regarding adoption of the amendment.

The section is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.310 (Religious, Educational, and Public Service Organizations) and §183.043 (Applicability of Other Law).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 18, 2016.

TRD-201601841
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Effective date: May 8, 2016
Proposal publication date: March 11, 2016
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.55

The Texas Board of Criminal Justice adopts amendments to §151.55, concerning Disposal of Surplus Agricultural Goods and Agricultural Personal Property, without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1663).

The adopted amendments are necessary to conform the rule to current practice.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013, §497.113.

Cross Reference to Statutes: None.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Sharon Howell
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