

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

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Seana Willing

Executive Director

Texas Ethics Commission

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For further information, please call: (512) 463-5800



CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.27

The Texas Ethics Commission (the Commission) proposes the repeal of Texas Ethics Commission Rules §18.27, which will be incorporated into a new rule clarifying the factors that the Commission will consider when assessing a civil penalty in the sworn complaint (enforcement) process.

Current Commission Rule §18.27 states that the Commission may consider the fine amounts set out in Title 1, Chapter 18 when assessing a fine in the sworn complaint process. The Commission intends to adopt in Title 1, Chapter 12 a new rule, §12.36, which would incorporate the language from current rule §18.27 with revisions. Chapter 12 is a more appropriate location containing other rules related to sworn complaints, and thus current rule §18.27 will be repealed. Subsection (b) of §18.27 states that the Commission is not required to waive a fine when a respondent corrects a report, but the Commission may consider it a mitigating factor. That language would be moved to rule §12.36(c) and amended to state that filing a late report or making a corrective action could also be considered mitigating factors when assessing a fine.

Seana Willing, Executive Director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed repeal.

The Executive Director has determined that during the first five years that the proposed repeal is in effect, it will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation; expand or limit an existing regulation; increase or decrease the number of individuals subject to the rule's applicability; or positively or adversely affects this state's economy. This rulemaking repeals an existing regulation.

The Executive Director has also determined that for each year of the first five years the proposed repeal is in effect the public benefit will be clarity in what factors the Commission may consider when assessing a civil penalty during the sworn complaint process. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

The Texas Ethics Commission invites comments on the proposed repeal from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Seana Willing, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the Commission concerning the proposed repeal may do so at any Commission meeting during the agenda item relating to the proposed repeal. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Texas Ethics Commission's website at www.ethics.state.tx.us.

The repeal of §18.27 is proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Chapter 571 of the Government Code.

The repeal of §18.27 affects Subchapters E and F of Chapter 571 of the Government Code.

§18.27. Sworn Complaints.

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

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Seana Willing

Executive Director

Texas Ethics Commission

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 10. CONTRACT PROCEDURES SUBCHAPTER C. CONTRACT MONITORING

7 TAC §10.40

The Finance Commission of Texas (commission) proposes new 7 TAC §10.40, concerning enhanced contract and performance monitoring, and the posting of certain contracts on finance agency websites.

The purpose of proposed new §10.40 is to place into regulation the finance agencies' procedures concerning contracts for the purchase of goods or services from private vendors. The finance agencies are the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner.

Subsection (a) states the purpose of the new rule, which provides the procedures applied by the finance agencies concerning contracts for the purchase of goods or services from private vendors.

Subsection (b) outlines the applicability of the rule to finance agency contracts made public or entered into on or after September 1, 2015. Additionally, proposed §10.40(b)(3) lists the types

of documents not subject to enhanced monitoring under the rule, as provided by Texas Government Code, §2261.253(d).

Subsection (c) describes the general procedures for contract evaluation and monitoring, including the use of finance agency policies and contract management handbooks and notice to the commission.

Subsection (d) provides for the posting of certain contracts under Texas Government Code, §2261.253(a), as well as the redaction of confidential information under §2261.253(e) prior to posting. The authorization to redact confidential information from these contracts was recently added by the Texas Legislature with the enactment of Senate Bill 533, effective September 1, 2017.

Charles G. Cooper, Banking Commissioner and Executive Director of the Finance Commission, on behalf of the finance agencies, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state or local government as a result of administering the rule. The proposed rule would place into regulation existing procedures, as required by Texas Government Code, §2261.253 to monitor and post contracts fulfilling certain statutory requirements. This process of enhanced contract and performance monitoring, along with website posting, requires identical amounts of staff time and effort to complete under the existing policies, which are incorporated by reference into the proposed rule, and involves the same consideration of facts and governing state law.

Mr. Cooper has also determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of the rule is that vendors and the public will have access to clear, published guidelines governing the enhanced contract and performance monitoring of the finance agencies. Additionally, the proposed new rule will further increase the accountability and transparency of contract procedures used by the finance agencies.

There is no anticipated cost to persons who are required to comply with the proposed new rule. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for small businesses, micro-businesses, or rural communities, as compared to large businesses. There will be no effect on individuals required to comply with the proposed new rule.

During the first five years the proposed new rule will be in effect, the rule will not create or eliminate a government program. Implementation of the rule will not require the creation of new employee positions or the elimination of existing employee positions. The proposed new rule does not require an increase or decrease in fees paid to the agencies or the commission. The proposal creates a new rule at §10.40, concerning enhanced contract and performance monitoring, and the posting of certain contracts on finance agency websites. The proposed new rule does not expand, limit, or repeal an existing regulation. The proposed new rule does not increase or decrease the number of individuals subject to the contract procedures in Chapter 10. The agencies do not anticipate that the proposed new rule will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of

business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The new rule is proposed under Texas Government Code, §2261.253(c), which requires each state agency to adopt rules establishing a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body.

The statutory provisions affected by the proposed new rule are contained in Texas Government Code, Chapter 2261.

§10.40. Enhanced Contract and Performance Monitoring; Website Posting.

(a) Purpose. Under Texas Government Code, §2261.253, the finance agencies apply the following procedures concerning contracts for the purchase of goods or services from private vendors.

(b) Applicability.

(1) Finance agencies. This section applies to the agencies governed by the Finance Commission of the State of Texas: the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner.

(2) Date of contracts subject to enhanced monitoring. This section applies to the following:

(A) contracts for which the request for bids or proposal is made public on or after September 1, 2015; and

(B) for contracts exempt from competitive bidding, contracts entered into on or after September 1, 2015.

(3) Documents not subject to enhanced monitoring. This section does not apply to:

(A) memoranda of understanding;

(B) interagency contracts;

(C) interlocal agreements; or

(D) contracts that do not involve a cost.

(c) Contract evaluation and monitoring.

(1) Use of finance agency policies and contract management handbook. Contracts are evaluated and monitored in accordance with each respective finance agency's policies and contract management handbook. Each finance agency maintains a contract management handbook in accordance with Texas Government Code, §2261.256.

(2) Finance Commission notice. If a finance agency identifies a contract that requires enhanced monitoring, the finance agency will notify the Finance Commission in accordance with its policies and contract management handbook. The finance agency will include in the notification any serious issues or risks identified with the contract.

(d) Website posting.

(1) Posting on finance agency website. Each finance agency will post on its website contracts that meet the posting requirements provided by Texas Government Code, §2261.253(a).

(2) Redaction of confidential information. Before posting the contracts under paragraph (1) of this subsection, each finance agency must redact information that is confidential by law, information excepted from public disclosure by the Texas Public Information Act (Texas Government Code, Chapter 552), and the social security number of any individual in accordance with Texas Government Code, §2261.253(e).

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

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Laurie B. Hobbs

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Finance Commission of Texas

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For further information, please call: (512) 936-7621



PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 88. CONSUMER DEBT MANAGEMENT SERVICES

The Finance Commission of Texas (commission) proposes amendments to 7 TAC, Chapter 88, §§88.101 - 88.105, 88.107, 88.108, 88.110, 88.201, 88.202, and 88.302, concerning Consumer Debt Management Services. The commission also proposes the repeal of 7 TAC §88.106. The proposed changes affect rules contained in Subchapter A, concerning Registration Procedures; Subchapter B, concerning Annual Requirements; and Subchapter C, concerning Operational Requirements.

In general, the purpose of the amendments to 7 TAC, Chapter 88 is to implement changes resulting from the commission's review of Chapter 88 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Chapter 88 was published in the *Texas Register* on November 3, 2017, (42 TexReg 6211). The agency did not receive any comments on the notice of intention to review.

The proposed rule changes primarily relate to four areas: (1) registration procedure updates, (2) recordkeeping and disclosure, (3) clarification, and (4) technical corrections.

The agency that enforces these rules, the Office of Consumer Credit Commissioner (OCCC), circulated an early draft of proposed changes to interested stakeholders. The OCCC did not receive any informal written precomments on the draft.

Any Chapter 88 rule not included in this proposal will be maintained in its current form. The individual purposes of the amendments to each section and the purpose of the proposed repeal are provided in the following paragraphs.

Regarding Subchapter A, concerning Registration Procedures, many of the proposed amendments update the rules to conform to current practice, including the use of the OCCC's online registration portal. Several amendments align the rules with the OCCC's current registration practice and use language similar to that adopted by the commission in other areas regulated by the OCCC.

In §88.101, definitions for "Commissioner" and "OCCC" are proposed for addition to be used throughout the chapter. The remaining definition of "Principal party" has been renumbered accordingly.

Section 88.102 outlines the requirements to file a new application. Proposed amendments to §88.102(a) remove unnecessary language and add references to the agency's acronym, OCCC. The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically.

Corresponding changes to further use this terminology are included throughout Chapter 88. The following provisions include proposed amendments to replace "commissioner" or "commissioner's" with a reference to the OCCC: §§88.102(a) and (b)(5), 88.103(b)(1) and (c), 88.105, 88.201(3), 88.202(a)-(c), and 88.302(a)-(b).

Proposed amendments in §88.102(b) provide a general description of application items that better align with the OCCC's online registration portal. These phrases are proposed to replace the titles of paper forms that are no longer used.

In §88.102(b)(3)(B), proposed amendments remove the current requirement to list spouses with community property interests as principal parties. These amendments will help streamline the registration process and reduce regulatory burden. The amendments will also make the application process simpler and more straightforward for applicants. If requested by the OCCC, applicants would still have to disclose the names of principal parties' spouses under proposed §88.102(b)(3)(B)(iv).

Proposed amendments to §88.102(b)(3)(B) adding clauses (iii) through (vii) update the disclosure of owners and principal parties to outline the application information that must be submitted for different entity types (i.e., limited liability companies, proprietorships, partnerships, and trusts or estates). These amendments provide better clarity to applicants regarding the ownership information necessary as it relates to each ownership structure.

Also in §88.102, proposed amendments to subsection (b)(4) provide clearer guidance for applicants on the required registered agent information that must be submitted with an application.

Section 88.103 describes how an application for a debt management services provider registration is processed. Subsections (a) and (f) contain proposed amendments to provide clarity and improve grammar and readability. Additionally, subsections (b) and (c) include proposed amendments to incorporate the terminology change described earlier under §88.102.

Section 88.104 relates to a provider's duty to update information. The current language of §88.104 has been reorganized into proposed subsection (a), providing better clarity and grammar. The proposed addition of subsection (b) explains that applicants and registrants must keep their contact information up-to-date. This provision is intended to ensure that the agency can contact registrants, and so that the agency can carry out its responsibility to monitor providers and ensure compliance, as provided by Texas Finance Code, §394.214.

Section 88.105 contains proposed technical corrections as described earlier in the discussion regarding §88.102.

Section 88.106 is proposed for repeal, as an inactive operation status is not currently used by debt management services providers.

Section 88.107 outlines the required fees for debt management services providers. A corresponding amendment to the repeal of §88.106 is proposed in §88.107(c), removing inactive status from the list of registration amendments. In addition, the phrase "sent