

administrative fee on any previous obligation within the appropriate period.

(3) An administrative fee may not be contracted for, charged, or received by an authorized lender on the refinancing of a loan that utilizes Texas Finance Code, §342.201(a), (d), or (e) rates for a period of 365 days after the lender has entered into a Texas Finance Code, §342.201(e) rate loan in which an administrative fee was contracted for, charged, or received.

(4) An administrative fee is a prepaid charge and may be contracted for, charged, or received in addition to the contractual interest charge authorized by Texas Finance Code, §342.201(a), (d), or (e).

(5) The administrative fee may be included in the cash advance on which interest is computed under Texas Finance Code, §342.201(a) or (e). The administrative fee may be included in the principal balance on which interest is computed under Texas Finance Code, §342.201(d).

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

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Matthew Nance

General Counsel

Office of Consumer Credit Commissioner

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



DIVISION 6. ALTERNATE CHARGES FOR CONSUMER LOANS

7 TAC §83.605

The rule changes to §83.605 are proposed under Texas Finance Code, §342.252(b), which authorizes the commission to adopt a rule prescribing a reasonable maximum amount of an acquisition charge under Chapter 342, Subchapter F. In addition, Texas Finance Code, §342.551, authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342, and Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 342.

§83.605. Acquisition Charge.

(a) As an alternative to the maximum acquisition charge specified in Texas Finance Code, §342.252(a) and §342.259(a)(1), an authorized lender may collect an acquisition charge that does not exceed the lesser of:

(1) 12.5% [10%] of the cash advance of the loan; or

(2) the maximum acquisition charge computed under subsection (b) of this section [§100].

(b) Computation of maximum acquisition charge.

(1) Definitions. In this subsection:

(A) "Consumer price index" means the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items, 1967=100, compiled by the Bureau of Labor Statistics, United States Department of Labor, or, if that index is canceled or superseded, the index chosen by the Bureau of Labor Statistics as most accurately reflecting the changes in the purchasing power of the dollar for consumers.

(B) "Reference base index" means the consumer price index for December 2023.

(2) Base amount. Effective until June 30, 2025, the maximum acquisition charge is \$125.

(3) Annual adjustment. Beginning in 2025, each year, the amount of the maximum acquisition charge will be adjusted. The adjustment will be effective from July 1 of the year of adjustment to June 30 of the next year. The adjusted amount of the maximum acquisition charge is the greater of \$125 or the amount computed by:

(A) dividing the reference base index into the consumer price index at the end of the preceding year;

(B) computing the percentage of change under subparagraph (A) of this paragraph to the nearest whole percent;

(C) multiplying \$125 by the result under subparagraph (B) of this paragraph; and

(D) rounding the result computed under subparagraph (C) of this paragraph to the next lower multiple of \$5.00, unless the result computed under subparagraph (C) of this paragraph is a multiple of \$5.00 in which event that result is used.

(4) Computation and publication. Beginning in 2025, each year, the OCCC will compute the adjusted maximum acquisition charge. No later than May 1, the OCCC will publish the amount of the maximum acquisition charge in effect for the year of adjustment.

(c) [~~(b)~~] Cash advance less than \$30. Subsections [Subsection] (a) and (b) of this section do [~~does~~] not apply to a loan for which the cash advance is less than \$30.

(d) [~~(e)~~] Limitation of one acquisition charge per month. For a Texas Finance Code, Chapter 342, Subchapter F loan, an authorized lender may not contract for, charge, or collect an acquisition charge more than once during a month to the same borrower for that loan, any refinancing of that loan, or any new loan made to the borrower within the same month.

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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CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

7 TAC §84.205

The Finance Commission of Texas (commission) proposes amendments to §84.205 (relating to Documentary Fee) in 7 TAC Chapter 84, concerning Motor Vehicle Installment Sales.

The rule at §84.205 relates to documentary fees for motor vehicle retail installment transactions. In general, the purposes of the proposed rule changes to 7 TAC §84.205 are: (1) to adjust the documentary fee amount that is presumed reasonable under the rule, and (2) to make technical corrections and updates.

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

Under Texas Finance Code, §348.006(a), in a motor vehicle retail installment transaction, the retail seller is authorized to charge "a documentary fee for services rendered for or on behalf of the retail buyer in handling and processing documents relating to the motor vehicle sale." Under §348.006(c), the documentary fee "may not exceed a reasonable amount agreed to by the retail seller and retail buyer for the documentary services." Under §348.006(e), before a retail seller increases the maximum amount of the documentary fee that the seller intends to charge, the seller must provide written notice to the OCCC, and the OCCC may review the amount for reasonableness. Under §348.006(f), a documentary fee is considered reasonable if it is less than or equal to the amount presumed reasonable as established by rule of the commission.

Currently, §84.205 describes the requirements for filing a written notification of an increased documentary fee under Texas Finance Code, §348.006, and describes the criteria that the OCCC uses to determine whether a documentary fee is reasonable. Current §84.205(b)(1) explains that a documentary fee of \$150 or less is presumed reasonable. The commission adopted the \$150 amount in 2016.

Proposed amendments throughout §84.205 would adjust the documentary fee amount that is presumed reasonable under the rule from \$150 to \$225. The proposal would adjust this amount throughout subsections (a), (b), (c), and (d).

The commission and the OCCC periodically adjust the documentary fee to ensure that it adequately represents a reasonable cost for documentary services in the current market. The agency's ongoing review of documentary fee cost analyses has indicated that most sellers can demonstrate costs related to documentary services of at least \$225. Of the 211 documentary fee filings submitted to the OCCC since 2020, the average filing amount is \$246.30. In 2022, in a contested case before the State Office of Administrative Hearings, an administrative law judge found that a dealership group met its burden of proving that a range of documentary fee amounts was reasonable. Proposal for Decision, Office of Consumer Credit Commissioner v. Clay Cooley Entities, SOAH Docket No. 466-22-0322 (Oct. 11, 2022) (hereinafter "Clay Cooley PFD"). The case involved extensive analysis of the dealership group's costs relating to payroll, facilities, software, forms, printing, and postage. The case resulted in a final order that approved a range of fees from \$202.58 to \$267.83 (with an average of \$245) as reasonable. Final Order to Reduce

Documentary Fees and Pay Restitution, Office of Consumer v. Clay Cooley Entities, SOAH Docket No. 466-22-0322 (Jan. 18, 2023).

Based on the analysis in the contested case regarding the Clay Cooley entities, as well as the OCCC's ongoing review of documentary fee cost analyses, the OCCC and the commission believe that it is appropriate to adjust the amount presumed reasonable from \$150 to \$225. The \$225 amount is well below typical documentary fee amounts in other states. A 2023 survey of 50 states and the District of Columbia reflects an average documentary fee of \$390. CarEdge, "Car Dealer Doc Fee by State in 2023 (Updated)," (rev. Dec. 8, 2023).

The proposal includes additional amendments that clarify requirements for a documentary fee cost analysis and include technical corrections. These clarifying amendments are discussed in the following six paragraphs.

A proposed amendment to §84.205(d)(2)(B) specifies that costs must be determined "in accordance with this section" in addition to being determined in accordance with generally accepted accounting principles (GAAP). This is intended to clarify that any costs included in the documentary fee must comply with both §84.205 and GAAP. In other words, if a cost is includable under GAAP but is not includable under §84.205, then it may not be included in the documentary fee. This is consistent with the analysis used by the administrative law judge in the contested case regarding the Clay Cooley entities. See Clay Cooley PFD at 26 (discussing specific timing requirements of the rule that control "rather than the general application of GAAP").

Proposed amendments to §84.205(d)(2)(E)(ii) would clarify requirements for including the cost of a credit report in the documentary fee. Proposed rule text would explain that a seller may include the cost of a credit report for a buyer who ultimately purchases a motor vehicle, that the seller must incur the cost uniformly in cash and credit transactions, and that the documentary fee may not include the cost of obtaining a credit report in unconsummated transactions. This text clarifies an issue that was analyzed by the administrative law judge in the contested case regarding the Clay Cooley entities. See Clay Cooley PFD at 30 (finding that the current text of §84.205 "does not restrict credit report costs to only consummated deals"). The OCCC and the commission believe that it is appropriate for the rule to limit credit report costs to consummated transactions. Credit report costs for unconsummated transactions are an indirect cost, do not directly relate to processing documents for a consummated transactions, and should not be subsidized by buyers in consummated transactions.

An additional proposed change to §84.205(d)(2)(E)(ii) replaces a reference to the USA PATRIOT Act with a reference to regulations of the Office of Foreign Assets Control (OFAC). OFAC rules prohibit sellers from doing business with certain specially designated nationals or blocked persons. See U.S. Department of the Treasury, Office of Foreign Assets Control, "Specially Designated Nationals And Blocked Persons List (SDN) Human Readable Lists" (rev. Dec. 20, 2023). Obtaining a credit report can be a way for sellers to ensure compliance with these OFAC rules. The citation to the OFAC rules is a more appropriate citation for this proposition than the current rule's reference to a provision of the USA PATRIOT Act.

Proposed amendments to §84.205(d)(3)(B)(ii)(I) would clarify requirements for including the cost of a sales contract in the documentary fee. The proposed language explains that any included

cost for a sales contract must be in the form of "only one" of the following: a purchase agreement, a buyer's order, a bill of sale, or a retail installment sales contract (excluding provisions used only in credit transactions). Because only one sales contract is legally required in order to sell a motor vehicle, this text is consistent with the requirement under §84.205(d)(2)(B) that costs must be legally required. The proposed text would clarify an ambiguity discussed by the administrative law judge in the contested case regarding the Clay Cooley entities. See Clay Cooley PFD at 15-17 (describing different possible interpretations of §84.205(d)(3)(B)(ii)(I) and an ambiguity regarding whether more than one type of sales contract may be included in the documentary fee).

Other proposed amendments to §84.205(d)(3)(B)(ii) would make technical corrections to the list of required forms that may be included in the documentary fee. A proposed amendments would remove current §84.205(d)(3)(B)(ii)(III), which allows the documentary fee to include the cost of the County of Title Issuance form (Form VTR-136). The OCCC understands that this form is now obsolete and is no longer used, following the passage of SB 876 (2021) and amendments to Texas Transportation Code, Chapter 501. A proposed amendment at §84.205(d)(3)(B)(ii)(IV) would replace a reference to the USA PATRIOT Act with a reference to regulations of OFAC, as discussed earlier in this preamble. Proposed amendments at §84.205(d)(3)(B)(ii)(VII) and (VIII) would make technical corrections to rule references regarding buyer's temporary tags. Other proposed amendments throughout §84.205(d)(3)(B)(ii) would renumber other subclauses accordingly.

A proposed amendment to §84.205(d)(3)(B)(v) would explain that the documentary fee may not include costs incurred while the dealership is closed, and that the documentary fee may not include costs relating to areas that are not involved in the processing of documents (e.g., common areas, break rooms, bathrooms). This proposed text is consistent with the current requirement in §84.205(d)(2) that costs must directly relate to the seller's preparation and processing of documents for a motor vehicle sale. The proposed text would help ensure that any facilities costs included in the documentary fee directly relate to processing documents.

Two associations of Texas motor vehicle dealers submitted written informal precomments expressing general support for the amendments to §84.205. One of these associations requested "that the proposal include an annual adjustment to the documentary fee's reasonable amount based on the Consumer Price Index (CPI) for Average Prices or another CPI as determined by the OCCC." The commission declines to use a recurring CPI-based adjustment to the reasonable documentary fee amount at this time. If documentary costs increase in the future, §84.205 enables dealers to file for a higher documentary fee and provide a cost analysis supporting the higher fee. The commission and the OCCC may periodically review the reasonable documentary fee amount.

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

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefits are that licensees will be able to charge documentary fees that re-

flect costs for motor vehicle dealers, and that the commission's rules will be more easily understood by licensees.

The OCCC does not anticipate that the proposed rule changes will result in economic costs to persons who are required to comply with the proposed rule changes.

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

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposal does not require an increase or decrease in fees paid to the OCCC. The proposal would not create a new regulation. The proposal would expand current §84.205 by adjusting the documentary fee amount presumed reasonable and adding clarifying text regarding the documentary fee cost analysis. The proposal would limit current §84.205 by removing outdated text relating to a documentary fee cost analysis. The proposal would not repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register*. After the 30th day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule amendments are proposed under Texas Finance Code, §348.006(f), which authorizes the Finance Commission to adopt a rule establishing a documentary fee amount that is presumed reasonable, and Texas Finance Code, §348.006(h), which authorizes the commission to adopt rules to enforce Texas Finance Code, §348.006, including rules relating to standards for a documentary fee reasonableness determination. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4, and Texas Finance Code, §348.513 authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 348.

The statutory provisions affected by the proposal 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 \$225 [\$150], the seller must provide the OCCC with a written notification of the maxi-

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) \$225 [\$150] or less. A seller is not required to provide a notification or cost analysis to the OCCC before charging a documentary fee of \$225 [\$150] or less. A documentary fee of \$225 [\$150] or less is presumed reasonable under Texas Finance Code, §348.006(f).

(2) Over \$225 [\$150]. Before charging a documentary fee greater than \$225 [\$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 \$225 [\$150], 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 \$225 [\$150], 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 \$225 [\$150]. 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 \$225 [\$150] 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 \$225 [\$150] 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 \$225 [\$150] 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 \$225 [\$150] (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 \$225 [\$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 \$225 [\$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 and in accordance with this section.

(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 for a buyer who ultimately purchases a motor vehicle, if the seller incurs this cost uniformly in cash and credit transactions [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 regulations of the Office of Foreign Assets Control, 31 C.F.R. Parts 501-599 [the USA PATRIOT Act, 31 U.S.C. §5318(i)(2)(C)]). The documentary fee may not include the cost of obtaining a credit report in unconsummated transactions.

(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 ~~must~~ may be in the form of only one of the following: [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);]

~~(-a-)~~ a purchase agreement;

~~(-b-)~~ a buyer's order;

~~(-c-)~~ a bill of sale; or

~~(-d-)~~ a 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;

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

(IV) ~~(V)~~ a copy of the buyer's driver's license, in order to verify the buyer's identity and ensure compliance with regulations of the Office of Foreign Assets Control, 31 C.F.R. Parts 501-599 ~~[the USA PATRIOT Act, 31 U.S.C. §5318(h)(2)(C)];~~

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

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

(VII) ~~(VIII)~~ the buyer's temporary tag, as required by Texas Transportation Code, §503.063, and 43 Texas Administrative Code §215.155 ~~[§245.155];~~

(VIII) ~~(IX)~~ the buyer's temporary tag receipt, as required by 43 Texas Administrative Code §215.156 ~~[§245.156];~~

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

(X) ~~(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 costs incurred while the seller's facilities are closed, because these are indirect costs that do not directly relate to the processing of documents. The documentary fee may not include costs associated with areas that are not involved in the processing of documents (e.g., common areas, break rooms, bathrooms). 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 ~~\$225~~ [\$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 ~~\$225~~ [\$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

\$225 [~~\$150~~] for a specified period of time if the seller violates this subsection.

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

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Matthew Nance

General Counsel

Office of Consumer Credit Commissioner

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



TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 6. STATE RECORDS

SUBCHAPTER A. RECORDS RETENTION SCHEDULING

13 TAC §6.10

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 13 TAC §6.10 is not included in the print version of the Texas Register. The figure is available in the on-line version of the March 1, 2024, issue of the Texas Register.)

The Texas State Library and Archives Commission (commission) proposes amendments to 13 Texas Administrative Code §6.10, Texas State Records Retention Schedules.

BACKGROUND. Government Code, §441.006 directs the commission to aid and encourage, by adoption of policies and programs, the development of effective records management and preservation programs in state agencies and the local governments of the state. Government Code, §441.185(f) authorizes the commission to prescribe by rule a minimum retention period for any state record unless a minimum retention period for the record is prescribed by another federal or state law, regulation, or rule of court. Under this authority, the commission has established the Texas State Records Retention Schedule ("RRS"), adopted as 13 TAC §6.10(a). The RRS indicates the minimum length of time records in a particular records series must be retained by Texas state agencies before destruction or archival preservation. If a records series includes an archival review code indicating the record is subject to transfer or archival review, those records must either be transferred to the State Archives for archival preservation after they are no longer needed in an agency or reviewed for historical value before disposal.

In addition, Government Code, §441.104 establishes the commission's duties under the State Publications Depository Program ("depository program"), under which the commission acquires, organizes, retains, and provides access to state publications. Under section 441.103 of the Government Code, state agencies are required to designate one or more staff persons

as agency publications liaisons, who are required to maintain a record of the agency's state publications. State agencies must furnish copies of their state publications to the commission in the number specified by commission rules.

The RRS includes "Archives" and "Caution" notes to emphasize the need for action or attention by an agency to ensure records with archival value are properly maintained and/or retained. State publications that are required to be deposited into the depository program do not also have to be maintained separately by the State Archives. The proposed amendments to two Archives and Caution Notes are necessary to align archival requirements with requirements of the depository program and ensure records appropriate for the depository program are not unnecessarily transferred to the State Archives as well. The proposed amendments also add or correct legal citations in three records series related to agendas and minutes of open meetings and agendas, minutes, and recordings of closed meetings.

EXPLANATION OF PROPOSED AMENDMENTS. The proposed amendment to the Archives Note for record series 1.1.074, Sunset Review Report and Related Documentation, deletes an agency's Sunset Self-Evaluation Report from the list of related documentation, as the Self-Evaluation Report is a state publication required to be submitted to the depository program.

The proposed amendment to the Caution Note for record series 4.5.003, Annual Financial Reports, deletes language requiring archival review for the reports. Instead, the archival requirement for these reports when a biennial or annual narrative report is not produced is met by sending the required copies to the depository program.

The proposed amendment to the Archives Note for record series 1.1.058, Meetings, Agendas and Minutes of Open adds a reference to Government Code, §324.008(d), which requires the governing body of a state agency to deliver to both the Legislative Reference Library and the commission a certified copy of the minutes of any meeting of the governing body. Addition of the legal citation will clarify where the archival requirement is outlined in statute to remove any confusion regarding permanent retention for state agencies.

The proposed amendment to the legal citations for record series 1.1.059, Meetings, Agendas and Minutes or Audiovisual Recordings of Closed and record series 1.1.060, Meetings, Agendas and Minutes or Audiovisual Recordings of Closed, corrects an error by moving the reference to Government Code, §551.104(a) from record series 1.1.060 to record series 1.1.059.

FISCAL IMPACT. Craig Kelso, Director, State and Local Records Management Division, has determined that for each of the first five years the proposed amendments are in effect, there are no reasonably foreseeable fiscal implications for the state or local governments as a result of enforcing or administering the amended rule, as proposed.

PUBLIC BENEFIT AND COSTS. Mr. Kelso has determined that for each of the first five years the proposed amendments are in effect, the anticipated public benefit will be clarity and consistency in state government entities' records management and in the commission's requirements pertaining to the depository program, ultimately improving the commission's ability to acquire, organize, retain, and provide access to state publications and archival records. There are no anticipated economic costs to persons required to comply with the proposed amendments.