



Office of the Governor
Regulatory Compliance Division
Rule Submission Memorandum

To: Regulatory Compliance Division Director
From: Matthew Nance, General Counsel, Office of Consumer Credit Commissioner
Date: March 18, 2024
Subject: Regulated Lender Fee Rule Amendments

The Finance Commission of Texas has proposed amendments to 7 TAC §83.503 and §83.605, as published in the March 1, 2024 issue of the *Texas Register*. The proposed rule affects market competition and is submitted to the Regulatory Compliance Division for review. The PDF version of the preamble and text of the proposed rule as published in the *Texas Register*, and the language of any amendments to the proposed rule that the Finance Commission of Texas intends to adopt, are attached to this memorandum.

To facilitate the Regulatory Compliance Division's review of the proposed rule, the Office of Consumer Credit Commissioner (OCCC) provides answers to the following questions.

1. Briefly describe the proposed rule.

The rule at 7 TAC §83.503 governs the maximum administrative fee for a consumer loan under Texas Finance Code, Chapter 342, Subchapter E. The proposed amendments to §83.503 would adjust the administrative fee to \$125 through June 2025, and the fee would then be adjusted annually based on the consumer price index (CPI).

The rule at 7 TAC §83.605 governs the maximum acquisition charge for a consumer loan under Texas Finance Code, Chapter 342, Subchapter F. Currently, §83.605(a) sets the maximum acquisition charge at the lesser of 10% of the cash advance or \$100. Under the proposed amendments to §83.605, the maximum acquisition charge would be set the lesser of 12.5% of the cash advance or \$125 through June 2025, and the \$125 amount would be adjusted annually based on CPI.

2. What is the purpose of the proposed rule?

In general, the purpose of the proposed rule changes is to adjust the maximum administrative fee and acquisition charge, in order to ensure that the reasonable maximum fee amounts in the rules reflect administrative costs of closing a loan.

3. Describe any relevant factual background to the proposed rule and the impetus for the state agency to consider rulemaking.

The proposed rules deal with regulated consumer loans under Texas Finance Code, Chapter 342, Subchapters E and F. A loan is generally subject to Chapter 342, Subchapter E or F if it has an interest rate greater than 10%, is not secured by real property, and is made for personal, family, or household use to a person located in Texas. Subchapters E and F include different interest rate structures, with Subchapter F loans tending to have smaller loan amounts (up to a maximum loan amount that is currently \$1,700 and is adjusted annually based on the consumer price index under Texas Finance Code, §341.203 and §342.259), and Subchapter E loans tending to have larger loan amounts (averaging around \$5,000). See Office of Consumer Credit Commissioner, 2023 Report on Availability, Quality, and Pricing of Certain Financial Services and Consumer Loan Products, pp. 13-15, 33 (Dec. 1, 2023).

The OCCC licenses and regulates lenders that provide loans under Chapter 342. The Finance Commission is the OCCC's oversight body and adopts rules to implement Chapter 342.

The administrative fee and the acquisition charge are up-front, non-interest charges to compensate the lender for administrative activities connected to the loan. The Finance Commission is authorized to set the reasonable maximum amount of the Subchapter E administrative fee under Texas Finance Code, §342.201(g), and is authorized to set the reasonable maximum amount of the Subchapter F acquisition charge under Texas Finance Code, §342.252(b). The commission set the current \$100 fee amounts in §83.503 and §83.605 in 2013. The amounts have not been adjusted since then. As the commission explained in its preamble to the 2013 adoption, the Subchapter E administrative fee "compensates the lender for the administrative costs of closing a loan and providing money to the borrower." 38 TexReg 5705 (Aug. 30, 2013). The Subchapter F acquisition charge "compensates the lender for performing the administrative activities related to making the loan and the risk involved in engaging in the transaction." 38 TexReg 5705 (Aug. 30, 2013).

The proposal would set the maximum fee amounts to \$125 through June 2025, and the fee amounts would then be adjusted annually based on the consumer price index (CPI). CPI is a measure of the change over time in prices paid by consumers. CPI is widely used as a measure of inflation and the overall price level in an economy. The U.S. Bureau of Labor Statistics explains that CPI is "the most widely used measure of inflation" and that CPI is "used to adjust other economic series for price change." U.S. Bureau of Labor Statistics, Consumer Price Indexes Overview (Jan. 23, 2023). The process for adjusting the fee amounts based on CPI is similar to the process that the Texas Legislature has specified to adjust rate bracket amounts under Texas Finance Code, §§341.201-341.204, and to adjust debt management fee amounts under Texas Finance Code, §394.2101. The OCCC and the commission believe that the CPI-based methodology in the amendments would provide an effective method for the administrative fee and acquisition charge to keep pace with increases in costs.

Between September 2013 (when the \$100 administrative fee went into effect) and November 2023, the CPI for Urban Wage Earners and Clerical Workers increased approximately 31% (from 230.537 to 301.224). In addition to CPI, other indexes increased during this period. Comments from lenders suggest

that the wages, office space, and technology are significant categories of costs. During this period, the seasonally adjusted Employment Cost Index for private industry workers (a measure of compensation for civilian workers) increased approximately 35% (from 119.0 to 160.7). The Commercial Real Estate Price Index increased approximately 64% (from 212,305 to 348,923). The Producer Price Index for Information Technology Technical Support and Consulting Services increased approximately 24% (from 103.900 to 128.939). Taken as a whole, this information strongly supports the conclusion that costs have increased for lenders since 2013.

The Federal Reserve Board and Fannie Mae have projected that inflation will continue into 2024 and 2025. The Federal Reserve Board has estimated core inflation at a median value of 2.4% for 2024 (with a range from 2.3% to 3.0%) and a median value of 2.2% for 2025 (with a range from 2.0% to 2.6%). Federal Reserve Board, Summary of Economic Projections, p. 2 (Dec. 13, 2023). Similarly, Fannie Mae expects “that core inflation will continue to move toward the Fed’s 2-percent target over the next year.” Fannie Mae, “Economic Developments - November 2023” (Nov. 17, 2023). This information suggests that costs will continue to increase for lenders in 2024 and 2025, although at a decelerated pace from the high inflation of the last several years.

The proposed adjustment to the maximum administrative fee and acquisition charge (from \$100 to \$125) approximates cost increases between September 2013 and November 2023. This adjustment would ensure that lenders can be compensated for the administrative costs of making a loan, which is the intent of §83.503 and §83.605. The proposed adjustment would achieve an appropriate balance by maintaining loan affordability for consumers while compensating lenders. In addition, the adjustment from 10% to 12.5% in §83.605 would help ensure that lenders can be compensated for cost changes since 2013 for loan amounts of \$1,000 or less. The amount is a maximum, so lenders are free to offer lower administrative fees and acquisition charges in a competitive marketplace.

4. Describe the legal authority for the proposed rule.

- a. Is the proposed rule specifically required or authorized by state statute? If so, list the statute(s).**

Yes, the proposed rule is specifically authorized by Texas Finance Code, §342.201(g) and §342.252(b).

- b. Is the proposed rule within the scope of the state agency’s general authority to regulate in a given occupation or industry? If so, describe how the proposed rule is within the scope, and reference the applicable state statute(s).**

Yes, the proposed rule is within the Finance Commission’s general rulemaking authority under Texas Finance Code, §11.304 and §342.551. The proposal relates to the regulation of lenders under Texas Finance Code, Chapter 342, and is necessary to supervise the OCCC, to ensure compliance with Chapter 342, and to enforce Chapter 342. In addition, the proposal is consistent with the OCCC’s general enforcement authority under Texas Finance Code, §14.201 to enforce Chapter 342 with respect to regulated persons.

5. Describe the process that the state agency followed in developing the proposed rule, including any public hearings held, public comments invited, studies conducted, and data collected or analyzed.

Since 2020, the OCCC and the commission have received and reviewed several informal and official comments from stakeholders dealing with the maximum administrative fee and acquisition charge, and have reviewed publicly available data regarding price levels (including CPI, Employment Cost Index, and Producer Price Index, as discussed above).

In 2020, the OCCC received an informal request from the Texas Consumer Credit Coalition (an organization of licensed lenders) to review the maximum administrative fee. The TCCC requested a rule amendment that would increase the maximum administrative fee and provided aggregated cost information purporting to justify this increase. To determine whether a rule amendment would be appropriate, in July 2021, the OCCC requested information about costs from stakeholders, and conducted an initial stakeholder meeting on this issue. Since then, the OCCC has provided stakeholders with four opportunities to provide informal comments on this issue: once in July and August 2021 (in response to the OCCC's initial information request), once in November 2021 (in response to an advance notice of rule review), once in January 2022 (in response to a precomment draft of amendments), and once in January 2024 (in response to a precomment draft of the current amendments). In addition, during December 2021 and January 2022, stakeholders submitted official comments in response to a published notice of rule review, and in February 2024, stakeholders testified at a meeting of the Finance Commission.

In general, lenders have provided informal and official comments that describe increased costs since 2013 and support amending §83.503. In response to the 2021 rule review notice, the TCCC provided an official comment explaining that the costs of originating loans have increased since the \$100 maximum was adopted in 2013. The comment focuses on costs for labor, occupancy, technology, and compliance. The comment states that although improvements in technology have created economies of scale, lenders face increased financial privacy, identity theft, and cybersecurity requirements. In particular, the comment describes recent amendments to the Federal Trade Commission's Safeguards Rule that will require costs to ensure compliance. Other groups of lenders have made similar points in informal precomments. For example, an attorney commenting on behalf of an association of banks explained that costs for overhead, labor, rent, and utilities have increased since 2013, and provided estimated loan origination costs ranging from \$185.35 (with labor making up \$106.35 of this estimate) to \$268. Another group of licensed lenders supported a CPI-based adjustment method, explaining that "[c]hanges in CPI evidence changes in costs, which is why CPI is commonly used for such adjustments." In 2024, TCCC filed an informal precomment expressing general support for a \$125 administrative fee with CPI-based adjustments, explaining that "as origination costs continue to rise, issues critical to consumer protection have increasingly required attention from our members. Efforts by lenders to safeguard financial privacy, to combat identity theft, and ensure cybersecurity have required continued investments. Additionally, large scale federal initiatives, like the Military Lending Act, the CFPB's third party vendor management requirements, and FTC's Safeguard Rule, have all increased up-front lending costs since the previous 2013 fee increase." Also in 2024, an association of Subchapter F lenders filed a written

precomment that supported changing the acquisition charge to the lesser of 12.5% of the cash advance or \$150.

In general, consumer groups provided informal and official comments that express concerns about increased costs for consumers and argue that the maximum administrative fee should be maintained at \$100 (or decreased due to increased efficiencies in electronic and online loans). In response to the 2021 published rule review notice, the Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending (organizations of community and faith leaders supporting reforms to protect Texas consumers) filed an official comment expressing concerns about increasing the administrative fee, arguing that this is not supported by available data. The comment points out that licensed lenders have experienced profits and certain decreased expenses. The comment argues that if §83.503 is amended, the maximum should be decreased from \$100. Other consumer organizations (submitting information on behalf of retired Texans and Texans in poverty) have made similar points in informal precomments. In 2024, two consumer organizations filed informal precomments reiterating these concerns about whether an increase to the administrative fee and acquisition charge is appropriate at this time.

The OCC and the commission believe that objective measures cited above (including CPI, Employment Cost Index, and Producer Price Index) strongly indicate that overall costs have increased since 2013. For the same reasons, the OCC and the commission disagree with the contention that costs have stayed the same or decreased. At the same time, the OCC does not believe that information provided by lenders warrants an increase above the proposed \$125 amount subject to CPI-based adjustments.

An informal precomment from an association of Subchapter F lenders recommends amending §83.605 to specify a maximum acquisition charge of the lesser of 12.5% of the cash advance or \$150 (with the \$150 amount adjusted annually based on CPI). The precomment points out that if the maximum in §83.605(a)(1) remains at 10%, the amendments would not provide any adjustment for loans up to \$1,000. The precomment explains: “Costs have increased with respect to the full range of loan amounts under Subchapter F, not just loans above \$1,000.” As discussed above, objective measures including CPI have increased since 2013. Costs have increased in a similar manner for loans above and below \$1,000. Without a change to the current 10% maximum in §83.605(a)(1), the rule would not reflect changes in costs since 2013 for loans up to \$1,000. Adjusting the 10% maximum to 12.5% (not to exceed \$125) maintains the same proportionate result between a \$1,000 loan with the proposed increased maximum acquisition charge of \$125 and a loan less than \$1,000. In order to ensure that that lenders can be compensated for cost changes since 2013 for loan amounts up to \$1,000, the proposal includes a change in §83.605(a)(1) to replace the 10% maximum with 12.5%.

6. Describe the harm that the proposed rule is intended to address and how the proposed rule will address the harm.

The proposal is intended to ensure that lenders can be compensated for the costs of making a loan, taking into account the fact that overall costs have increased since 2013, while also maintaining appropriate protections and limitations on behalf of consumers. The proposal would adjust the fee amounts to achieve this balance.

- 7. Do any less restrictive alternatives to the proposed rule exist for addressing the same harm? If so, include a comparison of the proposed rule to the alternatives and a justification for not pursuing a less restrictive alternative. If no less restrictive alternatives exist, explain why.**

The OCCC and the commission have not identified any less restrictive alternatives that would meet this proposal's objectives. The proposal is less restrictive than the current rule and does not create any new regulatory burden for lenders. Lenders would maintain their ability to charge lower fees in a competitive marketplace.

- 8. Indicate how the proposed rule affects market competition (See Section 57.105(d), Texas Occupations Code).**

- It creates a barrier to market participation in the state.
- It results in higher prices or reduced competition for a product or service provided by or to a license holder in the state.
- It both creates a barrier to market participation in the state and results in higher prices or reduced competition for a product or service provided by or to a license holder in the state.

- 9. Describe the specific impact that the proposed rule will have on market competition and how that effect is consistent with state policy as established by the Legislature in state statute.**

By adjusting the maximum administrative fee and acquisition charge, this proposal could result in lenders charging higher prices. The proposal is consistent with the statute because the rule would reflect reasonable maximum amounts for administrative activities to make loans, taking into account the fact that overall costs have increased since 2013.

- 10. Does the proposed rule relate to a question that is the subject of an opinion request pending before the Office of the Attorney General? Does the proposed rule relate to an opinion previously issued by the Office of the Attorney General?**

No, to the OCCC's knowledge, the proposed rule does not relate to a question that is the subject of an opinion request pending before the Office of the Attorney General. No, to the OCCC's knowledge, the proposed rule does not relate to an opinion previously issued by the Office of the Attorney General.

- 11. Does the proposed rule relate to a matter on which there is pending litigation or a final court order?**

No, to the OCCC's knowledge, the proposed rule does not relate to a matter on which there is pending litigation or a final court order.

12. Is there anything else that the state agency would like the Regulatory Compliance Division to know about the proposed rule?

The OCCC has attached copies of precomments and official comments received on this rule action. Audio of stakeholders' spoken testimony at the February 16, 2024 meeting of the Finance Commission is available at <https://www.fc.texas.gov/sites/default/files/2024-02/02162024-fc-audio.mp3> (audio of stakeholder comments begins at 1:02:39 and ends at 1:22:10).

For additional background information regarding Chapter 342 loans, the OCCC has also attached a copy of the OCCC's 2023 Report on Availability, Quality, and Pricing of Certain Financial Services and Consumer Loan Products. In particular, see pages 8-9, 13-16, and 32-33 of the report.



**Office of the Governor
Regulatory Compliance Division
Rule Submission Memorandum**

To: Regulatory Compliance Division Director
From: Matthew Nance, General Counsel, Office of Consumer Credit Commissioner
Date: March 18, 2024
Subject: Motor Vehicle Documentary Fee Rule Amendments

The Finance Commission of Texas has proposed amendments to 7 TAC §84.205, as published in the March 1, 2024 issue of the *Texas Register*. The proposed rule affects market competition and is submitted to the Regulatory Compliance Division for review. The PDF version of the preamble and text of the proposed rule as published in the *Texas Register*, and the language of any amendments to the proposed rule that the Finance Commission of Texas intends to adopt, are attached to this memorandum.

To facilitate the Regulatory Compliance Division's review of the proposed rule, the Office of Consumer Credit Commissioner (OCCC) provides answers to the following questions.

1. Briefly describe the proposed rule.

The rule at 7 TAC §84.205 governs documentary fees for motor vehicle retail installment transactions. The proposed amendments would adjust the documentary fee amount that is presumed reasonable under the rule from \$150 to \$225. The proposed amendments would also make technical corrections and updates relating to a seller's cost analysis to support a higher documentary fee.

2. What is the purpose of the proposed rule?

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 adjustment would ensure that the rule's documentary fee amount adequately represents a reasonable cost for documentary services in the current market.

3. Describe any relevant factual background to the proposed rule and the impetus for the state agency to consider rulemaking.

The proposed rule deals with motor vehicle retail installment transactions under Texas Finance Code, Chapter 348. A motor vehicle retail installment transaction is an agreement to purchase a motor vehicle

and pay the price of the vehicle over time. The OCCC licenses and regulates retail sellers (i.e., motor vehicle dealers that sell vehicles in retail installment transactions) under Chapter 348. The Finance Commission is the OCCC's oversight body and adopts rules to implement Chapter 348.

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, the rule at 7 TAC §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.

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 OCCC'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 Credit Commissioner 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).

4. Describe the legal authority for the proposed rule.

- a. Is the proposed rule specifically required or authorized by state statute? If so, list the statute(s).**

Yes, the proposed rule is specifically authorized by Texas Finance Code, §348.006(h).

- b. Is the proposed rule within the scope of the state agency's general authority to regulate in a given occupation or industry? If so, describe how the proposed rule is within the scope, and reference the applicable state statute(s).**

Yes, the proposed rule is within the Finance Commission's general rulemaking authority under Texas Finance Code, §11.304 and §348.513. The proposal relates to the regulation of retail sellers under Texas Finance Code, Chapter 348, and is necessary to supervise the OCCC, to ensure compliance with Chapter 348, and to enforce Chapter 348. In addition, the proposal is consistent with the OCCC's specific authority to review documentary fees for reasonableness as described in Texas Finance Code, §348.006, and is consistent with the OCCC's general enforcement authority under Texas Finance Code, §14.201 to enforce Chapter 348 with respect to regulated persons.

5. Describe the process that the state agency followed in developing the proposed rule, including any public hearings held, public comments invited, studies conducted, and data collected or analyzed.

The OCCC reviewed the analysis in the contested case regarding the Clay Cooley entities, as well as information obtained in its ongoing review of documentary fee cost analyses. On January 17, 2024, the OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review. On January 30, the OCCC held a stakeholder webinar regarding the rule changes. The OCCC received two informal written precomments generally supporting the rule text draft. On February 17, in a public meeting, the Finance Commission voted to publish the proposal for comment. The official comment period began on March 1, when the proposal was published in the *Texas Register*. The OCCC has received two official comments supporting the proposal.

6. Describe the harm that the proposed rule is intended to address and how the proposed rule will address the harm.

The proposal is intended to ensure that the rule's documentary fee amount adequately represents a reasonable cost for documentary services in the current market. The proposal would adjust the reasonable documentary fee amount accordingly. In addition, the proposal's technical corrections and updates are intended to ensure that a seller's cost analysis for a documentary fee \$225 is limited to amounts related to the processing of documents, as discussed in the section-by-section summary in the proposal's preamble.

- 7. Do any less restrictive alternatives to the proposed rule exist for addressing the same harm? If so, include a comparison of the proposed rule to the alternatives and a justification for not pursuing a less restrictive alternative. If no less restrictive alternatives exist, explain why.**

The OCCC and the commission have not identified any less restrictive alternatives that would meet this proposal's objectives. The proposal is less restrictive than the current rule and would decrease regulatory burden on retail sellers, because the proposal would adjust the range of documentary fee amounts that a seller may charge without submitting a cost analysis to the OCCC for review. Retail sellers would maintain their ability to charge lower documentary fees in a competitive marketplace.

- 8. Indicate how the proposed rule affects market competition (See Section 57.105(d), Texas Occupations Code).**

- It creates a barrier to market participation in the state.
- It results in higher prices or reduced competition for a product or service provided by or to a license holder in the state.
- It both creates a barrier to market participation in the state and results in higher prices or reduced competition for a product or service provided by or to a license holder in the state.

- 9. Describe the specific impact that the proposed rule will have on market competition and how that effect is consistent with state policy as established by the Legislature in state statute.**

By adjusting the reasonable documentary fee amount to \$225, this proposal could result in retail sellers charging higher documentary fees. The proposal is consistent with the statute because the \$225 amount represents a reasonable cost for documentary services in the current market.

- 10. Does the proposed rule relate to a question that is the subject of an opinion request pending before the Office of the Attorney General? Does the proposed rule relate to an opinion previously issued by the Office of the Attorney General?**

No, to the OCCC's knowledge, the proposed rule does not relate to a question that is the subject of an opinion request pending before the Office of the Attorney General. No, to the OCCC's knowledge, the proposed rule does not relate to an opinion previously issued by the Office of the Attorney General.

- 11. Does the proposed rule relate to a matter on which there is pending litigation or a final court order?**

No, to the OCCC's knowledge, the proposed rule does not relate to a matter on which there is pending litigation or a final court order. (As discussed above, the proposal relates to a matter on which there was a final OCCC order in a contested case, and a copy of this final order is attached.)

12. Is there anything else that the state agency would like the Regulatory Compliance Division to know about the proposed rule?

The OCCC has attached copies of precomments and official comments received on this rule action, as well as copies of the proposal for decision and final order in the contested case described above. Audio of a stakeholder's spoken testimony at the February 16, 2024 meeting of the Finance Commission is available at <https://www.fc.texas.gov/sites/default/files/2024-02/02162024-fc-audio.mp3> (audio of stakeholder comment begins at 1:57:55 and ends at 2:09:35).

For additional background information regarding Chapter 348 retail installment transactions, the OCCC has also attached a copy of the OCCC's 2023 Report on Availability, Quality, and Pricing of Certain Financial Services and Consumer Loan Products. In particular, see pages 8 and 27-31 of the report.

The OCCC has not included additional information relating to the review of specific documentary fee amounts submitted by retail sellers, because this information is confidential under Texas Finance Code, §348.006(e-1).

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

TITLE 7. BANKING AND SECURITIES

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

SUBCHAPTER A. RULES FOR REGULATED LENDERS

The Finance Commission of Texas (commission) proposes amendments to §83.503 (relating to Administrative Fee) and §83.605 (relating to Limitation on Acquisition Charge) in 7 TAC Chapter 83, Subchapter A, concerning Rules for Regulated Lenders.

The rules in 7 TAC Chapter 83, Subchapter A govern regulated lenders licensed by the Office of Consumer Credit Commissioner (OCCC) under Texas Finance Code, Chapter 342. In general, the purpose of the proposed rule changes is to adjust the maximum administrative fee and acquisition charge, in order to ensure that the rules reflect administrative costs of closing a loan.

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 four written precomments on the rule text draft. The OCCC and the commission appreciate the thoughtful input provided by stakeholders.

Proposed amendments to §83.503 would adjust the maximum administrative fee for a consumer loan under Texas Finance Code, Chapter 342, Subchapter E. The proposed amendments would also prescribe a method for annually adjusting the administrative fee based on the consumer price index (CPI). The commission is authorized to set the maximum amount of the administrative fee under Texas Finance Code, §342.201(g). Currently, §83.503(a) sets the maximum administrative fee at \$100. The commission adopted the \$100 maximum amount in 2013. As the commission explained in its preamble to the adoption, the administrative fee "compensates the lender for the administrative costs of closing a loan and providing money to the borrower." 38 TexReg 5705 (Aug. 30, 2013).

Proposed amendments to §83.605 would adjust the maximum acquisition charge for a consumer loan under Texas Finance Code, Chapter 342, Subchapter F. The proposed amendments would also prescribe a method for annually adjusting the acquisition charge based on CPI. The commission is authorized to set the maximum amount of the acquisition charge under Texas Finance Code, §342.201(g). Currently, §83.605(a) sets the maximum acquisition charge at the lesser of 10% of the cash ad-

vance or \$100. The commission adopted the \$100 maximum amount in 2013. As the commission explained in its preamble to the adoption, the administrative fee "compensates the lender for performing the administrative activities related to making the loan and the risk involved in engaging in the transaction." (38 TexReg 5705).

Under the proposed amendments to §83.503, the maximum administrative fee would be set at \$125 through June 2025 and would then be adjusted annually based on the consumer price index (CPI). Under the proposed amendments to §83.605, the maximum acquisition charge would be set the lesser of 12.5% of the cash advance or \$125 through June 2025, and the \$125 amount would be adjusted annually based on CPI. CPI is a measure of the change over time in prices paid by consumers. CPI is widely used as a measure of inflation and the overall price level in an economy. The U.S. Bureau of Labor Statistics explains that CPI is "the most widely used measure of inflation" and that CPI is "used to adjust other economic series for price change." U.S. Bureau of Labor Statistics, Consumer Price Indexes Overview (Jan. 23, 2023). The process for adjusting the fee amounts based on CPI is similar to the process that the Texas Legislature has specified to adjust rate bracket amounts under Texas Finance Code, §§341.201-341.204, and to adjust debt management fee amounts under Texas Finance Code, §394.2101. The OCCC and the commission believe that the CPI-based methodology in the amendments would provide an effective method for the administrative fee and acquisition charge to keep pace with increases in costs.

Between September 2013 (when the \$100 administrative fee went into effect) and November 2023, the CPI for Urban Wage Earners and Clerical Workers increased approximately 31% (from 230.537 to 301.224). In addition to CPI, other indexes increased during this period. Comments from lenders suggest that the wages, office space, and technology are significant categories of costs. During this period, the seasonally adjusted Employment Cost Index for private industry workers (a measure of compensation for civilian workers) increased approximately 35% (from 119.0 to 160.7). The Commercial Real Estate Price Index increased approximately 64% (from 212,305 to 348,923). The Producer Price Index for Information Technology Technical Support and Consulting Services increased approximately 24% (from 103.900 to 128.939). Taken as a whole, this information strongly supports the conclusion that costs have increased for lenders since 2013.

The Federal Reserve Board and Fannie Mae have projected that inflation will continue into 2024 and 2025. The Federal Reserve Board has estimated core inflation at a median value of 2.4% for 2024 (with a range from 2.3% to 3.0%) and a median value of 2.2% for 2025 (with a range from 2.0% to 2.6%). Federal Reserve Board, Summary of Economic Projections, p. 2 (Dec.

13, 2023). Similarly, Fannie Mae expects "that core inflation will continue to move toward the Fed's 2-percent target over the next year." Fannie Mae, "Economic Developments - November 2023" (Nov. 17, 2023). This information suggests that costs will continue to increase for lenders in 2024 and 2025, although at a decelerated pace from the high inflation of the last several years.

The proposed adjustment to the maximum administrative fee and acquisition charge (from \$100 to \$125) approximates cost increases between September 2013 and November 2023. This adjustment would ensure that lenders can be compensated for the administrative costs of making a loan, which is the intent of §83.503 and §83.605. The proposed adjustment would achieve an appropriate balance by maintaining loan affordability for consumers while compensating lenders. In addition, the adjustment from 10% to 12.5% in §83.605 would help ensure that lenders can be compensated for cost changes since 2013 for loan amounts of \$1,000 or less. The amount is a maximum, so lenders are free to offer lower administrative fees and acquisition charges in a competitive marketplace.

Since 2020, the OCCC has received several informal and official comments from stakeholders dealing with the maximum administrative fee under §83.503. In 2020, the OCCC received an informal request from the Texas Consumer Credit Coalition (an organization of licensed lenders) to review the maximum administrative fee. The TCCC requested a rule amendment that would increase the maximum administrative fee, and provided aggregated cost information purporting to justify this increase. To determine whether a rule amendment would be appropriate, in July 2021, the OCCC requested information about costs from stakeholders, and conducted an initial stakeholder meeting on this issue. Since then, the OCCC has provided stakeholders with four opportunities to provide informal comments on this issue: once in July and August 2021 (in response to the OCCC's initial information request), once in November 2021 (in response to an advance notice of rule review), once in January 2022 (in response to a precomment draft of amendments), and once in January 2024 (in response to a precomment draft of the current amendments). In addition, during December 2021 and January 2022, stakeholders submitted official comments in response to a published notice of rule review.

In general, lenders have provided informal and official comments that describe increased costs since 2013 and support amending §83.503. In response to the 2021 rule review notice, the TCCC provided an official comment explaining that the costs of originating loans have increased since the \$100 maximum was adopted in 2013. The comment focuses on costs for labor, occupancy, technology, and compliance. The comment states that although improvements in technology have created economies of scale, lenders face increased financial privacy, identity theft, and cybersecurity requirements. In particular, the comment describes recent amendments to the Federal Trade Commission's Safeguards Rule that will require costs to ensure compliance. Other groups of lenders have made similar points in informal precomments. For example, an attorney commenting on behalf of an association of banks explained that costs for overhead, labor, rent, and utilities have increased since 2013, and provided estimated loan origination costs ranging from \$185.35 (with labor making up \$106.35 of this estimate) to \$268. Another group of licensed lenders supported a CPI-based adjustment method, explaining that "[c]hanges in CPI evidence changes in costs, which is why CPI is commonly used for such adjustments." In 2024, TCCC filed an informal precomment expressing general support

for a \$125 administrative fee with CPI-based adjustments, explaining that "as origination costs continue to rise, issues critical to consumer protection have increasingly required attention from our members. Efforts by lenders to safeguard financial privacy, to combat identity theft, and ensure cybersecurity have required continued investments. Additionally, large scale federal initiatives, like the Military Lending Act, the CFPB's third party vendor management requirements, and FTC's Safeguard Rule, have all increased up-front lending costs since the previous 2013 fee increase." Also in 2024, an association of Subchapter F lenders filed a written precomment that supported changing the acquisition charge to the lesser of 12.5% of the cash advance or \$150.

In general, consumer groups provided informal and official comments that express concerns about increased costs for consumers, and argue that the maximum administrative fee should be maintained at \$100 (or decreased due to increased efficiencies in electronic and online loans). In response to the 2021 published rule review notice, the Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending (organizations of community and faith leaders supporting reforms to protect Texas consumers) filed an official comment expressing concerns about increasing the administrative fee, arguing that this is not supported by available data. The comment points out that licensed lenders have experienced profits and certain decreased expenses. The comment argues that if §83.503 is amended, the maximum should be decreased from \$100. Other consumer organizations (submitting information on behalf of retired Texans and Texans in poverty) have made similar points in informal precomments. In 2024, two consumer organizations filed informal precomments reiterating these concerns about whether an increase to the administrative fee and acquisition charge is appropriate at this time.

The OCCC and the commission believe that objective measures cited earlier in this preamble (including CPI, Employment Cost Index, and Producer Price Index) strongly indicate that overall costs have increased since 2013. For the same reasons, the OCCC and the commission disagree with the contention that costs have stayed the same or decreased. At the same time, the OCCC does not believe that information provided by lenders warrants an increase above the proposed \$125 amount subject to CPI-based adjustments.

An informal precomment from an association of Subchapter F lenders recommends amending §83.605 to specify a maximum acquisition charge of the lesser of 12.5% of the cash advance or \$150 (with the \$150 amount adjusted annually based on CPI). The precomment points out that if the maximum in §83.605(a)(1) remains at 10%, the amendments would not provide any adjustment for loans up to \$1,000. The precomment explains: "Costs have increased with respect to the full range of loan amounts under Subchapter F, not just loans above \$1,000." As discussed earlier in this preamble, objective measures including CPI have increased since 2013. Costs have increased in a similar manner for loans above and below \$1,000. Without a change to the current 10% maximum in §83.605(a)(1), the rule would not reflect changes in costs since 2013 for loans up to \$1,000. Adjusting the 10% maximum to 12.5% (not to exceed \$125) maintains the same proportionate result between a \$1,000 loan with the proposed increased maximum acquisition charge of \$125 and a loan less than \$1,000. In order to ensure that lenders can be compensated for cost changes since 2013 for loan amounts up to \$1,000, the proposal includes a change in §83.605(a)(1) to replace the 10% maximum with 12.5%.

The OCCC appreciates the feedback of stakeholders on the issue of the administrative fee and the acquisition charge, and invites further comments in response to this proposal.

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 benefit is that licensees will be able to charge administrative fees and acquisition charges that keep pace with changing costs.

The OCCC does not anticipate that the proposed rule changes will result in any 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 §83.503 and §83.605 to provide a revised method for determining the maximum administrative fee and acquisition charge. The proposal would not limit or 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.

DIVISION 5. INTEREST CHARGES ON LOANS

7 TAC §83.503

The rule changes to §83.503 are proposed under Texas Finance Code, §342.201(g), which authorizes the commission to adopt a rule prescribing a reasonable maximum amount of an administrative fee under Chapter 342, Subchapter E. 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.

§83.503. *Administrative Fee.*

An authorized lender may collect an administrative fee pursuant to Texas Finance Code, §342.201(f), on interest-bearing and precomputed loans.

(1) As an alternative to the maximum administrative fee specified in Texas Finance Code, §342.201(f), an authorized lender may collect an administrative fee that does not exceed the maximum administrative fee amount computed under this paragraph [\$100].

(A) Definitions. In this paragraph:

(i) "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.

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

(B) Base amount. Effective until June 30, 2025, the maximum administrative fee is \$125.

(C) Annual adjustment. Beginning in 2025, each year, the amount of the maximum administrative fee 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 administrative fee is the greater of \$125 or the amount computed by:

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

(ii) computing the percentage of change under clause (i) of this subparagraph to the nearest whole percent;

(iii) multiplying \$125 by the result under clause (ii) of this subparagraph; and

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

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

(2) An administrative fee may not be contracted for, charged, or received by an authorized lender directly or indirectly on a renewal or modification of an existing obligation that has an interest charge authorized by Texas Finance Code, §342.201(e) more than once in any 365-day period. An administrative fee may not be contracted for, charged, or received by an authorized lender directly or indirectly on a renewal or modification of an existing obligation that has an interest charge authorized by Texas Finance Code, §342.201(a) or (d) more than once in any 180-day period. The administrative fee may be contracted for, charged, or received in a renewal or modification if the authorized lender did not contract for, charge, or receive the

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.

Filed with the Office of the Secretary of State on February 16, 2024.

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Matthew Nance

General Counsel

Office of Consumer Credit Commissioner

Earliest possible date of adoption: March 31, 2024

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 [~~do 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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Matthew Nance

General Counsel

Office of Consumer Credit Commissioner

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



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 amendment 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-

fect 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-

mum 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;

(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(l)(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(l)(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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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.