



GOVERNOR GREG ABBOTT

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From: Erin Bennett, Director
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Date: April 19, 2022

Subject: Title 7 Texas Administrative Code Sections 33.13 and 33.27 (RCD Rule Review #2022-002)

I. Syllabus

On February 11, 2022, the Texas Department of Banking (“department”), on behalf of the Finance Commission of Texas (“commission”), filed an intent to review and consider for readoption, revision, or repeal 7 TAC Chapter 33, pursuant to Section 2001.039, Texas Government Code.¹ Chapter 33 governs the state’s money services businesses, including both money transmission businesses and currency exchange businesses. On March 16, 2022, the department submitted two of that chapter’s provisions to the Regulatory Compliance Division (“division”) for review: §33.13, which describes the licensure qualifications and process for money services businesses, and §33.27, which establishes fees for obtaining and maintaining a license.² The department also proposed minor grammatical and organizational changes to §33.27 as a result of its own internal review of the rule.³ The division invited public comments on the rules for a period ending April 18, 2022, but received no comments. Based on the following analysis, the division has determined that both rules are consistent with state policy, and, therefore, §33.13 may be readopted in its current form and §33.27 with the proposed amendments.

II. Analysis

¹ 47 Tex. Reg. 677 (2022) (notice of intent to review 7 TAC ch. 33) (published Feb. 11, 2022) (Tex. Dep’t. Banking).

² Rule Submission Memorandum from the Texas Department of Banking (Mar. 16, 2022), at 1-2 (on file with the Regulatory Compliance Division of the Office of the Governor).

³ 47 Tex. Reg. 1044 (2022) (to be codified as an amendment to 7 TAC §33.27) (proposed Mar. 4, 2022) (Tex. Dep’t. Banking).

In 2005, Chapter 151, Texas Finance Code, was enacted to modernize and consolidate regulation of money services businesses in Texas.⁴ House Bill 2218 combined into a single chapter regulation of the state's two types of money services businesses, money transmission businesses and currency exchange businesses.⁵ Money transmission businesses may engage in a variety of money transmission activities, including issuing and selling prepaid access cards and instruments, receiving money for transmission, providing third-party bill paying services, and transporting and exchanging currency.⁶ As their name implies, currency exchange businesses may only engage in currency exchange.⁷

Section 151.102 grants the commission broad rulemaking authority with respect to money services businesses, and 7 TAC Chapter 33 reflects the department's administration of Chapter 151, including the requirements that most money services businesses be licensed by the department in Sections 151.302 and 151.502 and the allowance of fees to cover the department's costs in Section 151.102(a)(5). In particular, §33.13 details the prerequisites and process for licensure as a money services business, and §33.27 enumerates the fee types and amounts relating to money services businesses. Because licensure requirements and fees create barriers to engaging in the money services business in Texas and may reduce competition for money services in the state, the department identified the rules as affecting market competition pursuant to Section 57.105(d)(1) and (2), Texas Occupations Code, and, consequently, submitted them to the division for review.⁸

A. The division finds that §33.13, the department's licensure rule for money services businesses, is consistent with state policy.

Section 33.13 was originally adopted in 2006, following the enactment of Chapter 151.⁹ That chapter contains many provisions relating to the licensure of money transmission businesses and currency exchange businesses, and most of the first portion of §33.13 directly reflects statute. After identification of the rule's applicability in Subsection (a), Subsection (b) requires for initial licensure the submission of an application on the form prescribed by the department and any additional information and documentation specified by the department; these requirements appear in Section 151.203(a), which specifically applies to an applicant for a new money transmission license in Section 151.304(a) and an

⁴ 31 Tex. Reg. 1547 (2006) (preamble to proposed 7 TAC §§33.13, 33.15, 33.21, and 33.51) (Mar. 10, 2006) (Tex. Dep't. Banking); 31 Tex. Reg. 4982 (2006) (preamble to proposed 7 TAC §§33.7 and 33.27) (June 23, 2006) (Tex. Dep't. Banking).

⁵ *Id.*; Acts of 2005, 79th Leg., R.S., ch. 1099 (H.B. 2218).

⁶ Texas Department of Banking, *Money Services Businesses Notice to Applicants*, <https://www.dob.texas.gov/applications-forms-publications/notice-applicants> (last visited Apr. 11, 2022); *see also* Section 151.301(b)(4), Texas Finance Code.

⁷ Texas Department of Banking, *Money Services Businesses Notice to Applicants*, <https://www.dob.texas.gov/applications-forms-publications/notice-applicants> (last visited Apr. 11, 2022); *see also* Section 151.501(b)(2), Texas Finance Code.

⁸ Rule Submission Memorandum from the Texas Department of Banking (Mar. 16, 2022), at 4-5.

⁹ 31 Tex. Reg. 1548-49 (2006), *adopted* 31 Tex. Reg. 3869 (2006) (codified at 7 TAC §33.13).

applicant for a new currency exchange license in 151.504(a). Subsection (c) then explains that the application process involves an investigation of the applicant and any principals with a significant ownership interest in the applicant; and, in the course of an investigation, the banking commissioner may obtain additional information necessary to evaluate the applicant. Such an investigation is required under Sections 151.204(b), 151.305, and 151.505 and specifically extends to principals in Section 151.204(b)(3) and to the gathering of additional information in Section 151.204(b)(4).

Subsection (d)(1) goes into further detail about what a licensure application must contain, including the applicant's sworn signature as required in Section 151.203(a), an application fee as required in Sections 151.304(b)(1) and 151.504(b)(1), and all search firm reports. The requirement to submit search firm reports was added in 2011 and refers to the investigative background reports that the department requires for any principal, control shareholder, or responsible individual of an applicant who has not resided in the U.S. for at least seven years and for whom domestic background resources are limited.¹⁰ The requirement to submit these reports is supported by Section 151.203(a)(3), which authorizes the banking commissioner to require a licensure application to include information or documentation, not mentioned in statute, but necessary for determining whether an applicant qualifies for a license, and Section 151.202, which requires satisfactory demonstration of the financial responsibility and condition, financial and business experience, competence, character, and general fitness of each principal, control shareholder, and responsible individual prior to licensure.¹¹ In addition to the above, Subsection (d)(1) also requires submission of a minimum amount of security and an audited financial statement showing net worth for an applicant for a money transmission license, as required in Section 151.304(b)(2) and (3). And, it contains similar security and financial statement requirements for a currency exchange license applicant, as required in Section 151.504(b)(2) and authorized in Section 151.203(a)(3), respectively.

Moving into the latter portion of §33.13, Subsections (d)(2), (e), (f), and (g) detail how and when the department will notify an applicant of missing items, whether or not an application is complete and accepted for filing, and if additional information is needed. These subsections also specify when an applicant must submit missing items and additional information and the consequences of an applicant's failure to provide such documentation to the department. The procedures and deadlines provided for in these subsections give applicants adequate notice of the standard expectations for the department and applicants with regard to the licensure process, and, thus, the subsections are a reasonable fulfillment of the commission's obligation to establish time periods for processing and acting on applications in Section 151.204(a).

¹⁰ 36 Tex. Reg. 4047 (2011), *adopted* 36 Tex. Reg. 5669 (2011) (codified as an amendment to 7 TAC §33.13); 36 Tex. Reg. 4046 (2011) (preamble to proposed 7 TAC §33.13) (July 1, 2011) (Tex. Dep't. Banking).

¹¹ *See* 36 Tex. Reg. 4046 (2011) (preamble to proposed 7 TAC §33.13) (July 1, 2011) (Tex. Dep't. Banking).

Lastly, the final provisions of §33.13 address determinations on applications and grievances stemming from the licensure process. Subsection (h) directs the department to issue any approval or denial in writing, and Subsection (i) allows an applicant to appeal any denial, as provided for in Section 151.205(b). And, Subsection (j) makes clear that an applicant may file a complaint if the department fails to comply with the application processing times in the rule, which is facilitated by the department's requirement to maintain a system for receiving and acting on complaints in Section 12.108, Texas Finance Code. Thus, because each provision of §33.13 directly reflects or is supported by statute, the rule in its entirety is consistent with state policy.

B. The division also finds that §33.27, the department's fee rule for money services businesses, is consistent with state policy.

Section 33.27 was also originally adopted in 2006, following the enactment of Chapter 151.¹² As mentioned above, Section 151.102(a)(5) gives the commission broad latitude to adopt by rule fees necessary and appropriate to cover the department's costs for general maintenance and operations and to administer and enforce Chapter 151. While that provision provides general statutory support for much of §33.27, many of the rule's fees are also specifically required or authorized by statute. Following the applicability statement, definitions, and statutory citations in Subsections (a), (b), and (c), Subsection (d)(1) establishes application fees for new money transmission and currency exchange licenses, as directed by Sections 151.304(b)(1) and 151.504(b)(1). Subsection (d)(1)(A) and (B) provides for the payment of costs associated with on-site investigations and third-party screening services conducted pursuant to application investigations, as authorized by Sections 151.204(c) and 151.104(e). Requiring applicants to pay for fingerprint background checks in Subsection (d)(1)(C) is a reasonable requirement given Section 151.203(b), and Section 151.306(a)(5) mandates the payment of the temporary license application fee that is required in Subsection (d)(2). Importantly, Subsection (d)(3) allows the banking commissioner to reduce fees in this subsection if a lesser amount would be sufficient to administer and enforce Chapter 151, which ensures that the commission adheres to the parameters of its fee setting ability in Section 151.102(a)(5).

Subsection (e) focuses on the annual assessment charged to current money transmission and currency exchange license holders; per Subsection (b)(1), the fee includes the annual license fee required by Section 151.207(b)(1) and covers the costs incurred by the department to annually examine the license holder. Section 151.601(b)(1) authorizes the banking commissioner to annually examine license holders, and Section 151.601(d) specifically directs license holders to pay all costs reasonably incurred in connection with an examination. Subsection (e) conditions the amount of the annual assessment on the amount of annual transactions conducted by the license holder and simply charges new license holders an hourly rate for the examination. This makes sense given license holders'

¹² 31 Tex. Reg. 4984-86 (2006), *adopted* 31 Tex. Reg. 6643 (2006) (codified at 7 TAC §33.27).

statutory responsibility for the costs of examinations; as the volume of business conducted grows, it naturally follows that so too does the complexity and costs of the annual examination.

Next, Subsection (f) addresses certain fees charged in connection with a department investigation and requires payment from the investigated party for the work and travel expenses of department investigators, third-party screening services, and fingerprint background checks. Section 151.104 grants the banking commissioner broad authority to conduct investigations, and Section 151.104(e) specifically allows the recovery of reasonable costs incurred in connection with an investigation from the subject of the investigation. Then, Subsection (g) lists the fees to file an application requesting approval for a change of control and to receive a prior determination as to whether a change of control application is necessary. Section 151.605 governs changes of control, and Sections 151.605(c)(3) and (i) specifically require the fee types in Subsection (g). And, in the last set of itemized fees, Subsection (h) sets out the late fee for license holders who are tardy in filing their annual reports, as required by Section 151.207(c)(2), as well as additional examination-related fees, which are required by Section 151.601(d).

The final provisions of §33.27 provide guidance about how and when to pay the section's fees and establish a procedure for currency exchange license holders to request a temporary reduction in their annual assessment on account of financial hardship. The payment instructions and deadlines in Subsection (i) facilitate the recovery of department costs required in Section 151.102(a)(5). In Subsection (j), the option to apply for a temporary reduction in their annual assessment actually lowers the barrier for currency exchange license holders to continue to engage in the money services business in Texas. The reduction option was specifically created for currency exchange license holders because they are generally micro-businesses and small businesses, and were most likely to be affected by the increased fees that were adopted contemporaneously with the reduction option.¹³ This option furthers the general directive in Section 2006.002, Texas Government Code, for state agencies to consider and, if possible, reduce the adverse effect rulemakings will have on small businesses, micro-businesses, and rural communities.¹⁴

As mentioned above, the department has proposed minor grammatical and organizational changes to §33.27 to clarify the language of the rule and to improve its consistency with other sections of Chapter 33.¹⁵ These proposed changes impact none of the substantive provisions of the rule nor its effect on market competition but do improve the rule's

¹³ Agency Response to Request for Additional Information (Apr. 5, 2022), at 2 (on file with the Regulatory Compliance Division of the Office of the Governor).

¹⁴ See Agency Response to Request for Additional Information (Apr. 5, 2022), at 2 and Attachment C Finance Commission Meeting Minutes for June 21, 2002 at 3.

¹⁵ 47 Tex. Reg. 1043 (2022) (preamble to proposed 7 TAC §§33.7, 33.23, 33.27, 33.33, 33.37, 33.51, and 33.54) (Mar. 4, 2022) (Tex. Dep't. Banking).

readability. Thus, because each provision of §33.27, including those with proposed changes, is directed or authorized by statute, the rule, as amended, is consistent with state policy.

III. Determination

Based on the above analysis, §§33.13 and 33.27 are approved by the division and may be readopted in their current form and with the proposed amendments, respectively.