

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 84. MOTOR VEHICLE INSTALLMENT SALES

The Finance Commission of Texas (commission) proposes amendments to §84.601 (relating to Definitions), §84.602 (relating to Filing of New Application), §84.604 (relating to Transfer of License; New License Application on Transfer of Ownership), §84.607 (relating to Updating Application and Contact Information), §84.608 (relating to Processing of Application), §84.610 (relating to License Inactivation or Voluntary Surrender), §84.613 (relating to Denial, Suspension, or Revocation Based on Criminal History), §84.615 (relating to Applications and Notices as Public Records), §84.617 (relating to License Term, Renewal, and Expiration), and §84.708 (relating to Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts)); and proposes the repeal of §84.603 (relating to New Registered Offices), §84.605 (relating to Change in Form or Proportionate Ownership), §84.606 (relating to Amendments to Pending Application), §84.609 (relating to Relocation of Licensed Offices), §84.612 (relating to Implementation Provisions of Licensing), §84.616 (relating to License Display), §84.707 (relating to Files and Records Required (Retail Sellers Assigning Retail Installment Sales Contracts)), and §84.709 (relating to Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts)) in 7 TAC Chapter 84, concerning Motor Vehicle Installment Sales.

Summary of Proposed Rule Changes

The rules in 7 TAC Chapter 84 govern motor vehicle retail installment transactions. In general, the purposes of the proposed rule changes to 7 Chapter 84 are to implement the OCCC's transition to the NMLS licensing system for motor vehicle sales finance companies and commercial motor vehicle sales finance companies, and to make other technical corrections and updates related to licensing and recordkeeping. The proposed rule changes also incorporate recommendations from the Texas Regulatory Efficiency Office.

Proposed amendments and repeals in §84.601 through §84.617 would implement the OCCC's transition to the NMLS system. The Nationwide Multistate Licensing System (NMLS) is an online platform used by state financial regulatory agencies to manage licenses, including license applications and renewals. NMLS was created in 2008. The federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 explains that the purposes of NMLS include increasing uniformity and reducing regulatory burden. SAFE Act, 12 USC §5101. Each state currently uses NMLS

for licensing individual RMLOs, and states are increasingly using the system to license consumer finance companies. NMLS is managed by the Conference of State Bank Supervisors and is subject to ongoing modernization efforts and enhancements.

Under Texas Finance Code, §14.109, the OCCC is authorized to require use of NMLS for motor vehicle sales finance licenses under Texas Finance Code, Chapter 348. The OCCC has begun a phased process of migrating license groups from ALECS (the OCCC's previous licensing platform) to NMLS. The OCCC believes that moving to NMLS will improve the user experience of the licensing system and promote efficiency.

Proposed amendments to §84.601 would replace the term "registered office" with "branch," and would replace the term "principal party" with "key individual," in order to be consistent with the terminology in NMLS. Other proposed amendments would specify that terms used in Texas Finance Code, Chapter 353 apply to the licensing rules, and would remove definitions that are no longer necessary because the terms are used in sections being repealed by this proposal.

Proposed amendments to §84.602 would streamline license application requirements and refer to instructions that the OCCC has published through NMLS. Currently, §84.602 contains a detailed list of license application items, with requirements that differ based on the applicant's entity type (e.g., partnership, corporation, limited liability company). In addition to ensuring consistency with NMLS, the proposed amendments would significantly simplify §84.602 and ensure that an applicant can easily read and understand the rule. Proposed amendments at §84.602(c) describe the requirements for a branch license application, which will replace the current requirements for a registered office. A proposed amendment at §84.602(d) explains that the OCCC may require additional, clarifying, or supplemental information to determine that the applicant meets statutory licensing requirements. A proposed amendment at §84.602(e) explains that an applicant must immediately amend a pending application if any information changes requiring a materially different response, replacing language that would be removed from §84.606, as explained later in this preamble.

The proposal would repeal §84.603, which currently describes requirements for an application for a registered office. These provisions will no longer be necessary, because they will be replaced by the new provisions at §84.602(c) regarding branch licenses, as discussed earlier in this preamble. Under Texas Finance Code, §348.501(b) and §353.501(b), licensees are required to ensure that each location where retail installment transactions are made, held, serviced, or collected is licensed. Because the statute specifies this requirement, it is not necessary to repeat the requirement in the text of the rule.

Proposed amendments to §84.604 would streamline and simplify requirements for transfer of ownership and license transfer to ensure consistency with NMLS. In §84.604(b)(3), proposed amendments to the definition of "transfer of ownership" would streamline the definition of "transfer of ownership" while maintaining references to changes in management or control of a business, and also maintaining current exclusions relating to changes in proportionate ownership and relocations of transactions. Going forward in NMLS, the OCCC anticipates that changes to the identifies of a single company's owners will be handled through the advance change notice process, as explained later in this preamble in the discussion of proposed amendments to §84.604. A proposed amendment to §84.604(c) would explain that to transfer a license, a transferor may request surrender of its license after the OCCC approves the transferee's new license application on transfer of ownership. Other proposed amendments throughout §84.604 would ensure consistency with revised transfer and licensing processes.

The proposal would repeal §84.605, which currently requires licensees to notify the OCCC of changes to organizational form, mergers resulting in creation of a new or different surviving entity, and certain changes in proportionate ownership. Going forward in NMLS, the OCCC anticipates that these changes will be handled through the advance change notice process, as explained later in this preamble in the discussion of proposed amendments to §84.607. Therefore, §84.605 will no longer be necessary.

The proposal would repeal §84.606, which currently requires license applicants to provide supplemental information to the OCCC on request. Because of the proposed amendment at §84.602(d) explaining the OCCC may require additional information, §84.606 will no longer be necessary.

Proposed amendments to §84.607 would consolidate and simplify the types of required notifications that a licensee must provide to the OCCC when a change occurs. In §84.607(a), the proposed amendments would list advance change notices. NMLS uses the term "advance change notice" to refer to notifications that must be provided on or before the date of the change, in accordance with an agency's written instructions. As explained in the proposed amendments to §84.607(a), this includes changes to the legal name of the entity, the legal status of the entity, names of key individuals, branch location addresses, and other listed items. In §84.607(b), proposed amendments would list notifications that are required not later than 30 days after the licensee has knowledge of the information. These items include bankruptcies of the licensee or its direct owners, because a bankruptcy is a significant event that may impact the financial responsibilities of a licensee and its ability to address compliance issues. These items also include notifications of data breaches affecting at least 250 Texas residents. Data security is a crucial issue. The OCCC's 2027-2031 strategic plan includes action items to "[p]romote cybersecurity awareness and best practices among regulated entities" and "[m]onitor cybersecurity incidents and remediation efforts reported by regulated entities." Recent data breaches affecting financial institutions highlight the urgent need for vigilance in this industry. The proposed notification amendments will help ensure that the OCCC can monitor this crucial issue.

Proposed amendments to §84.608 would revise license application processing requirements to be consistent with NMLS. A proposed amendment at §84.608(c) would explain that a license application may be considered withdrawn if a complete application has not been filed within 30 days after a notice of deficiency has

been sent to the applicant, consistent with how license applications are processed in NMLS. A proposed amendment would remove current §84.608(f), regarding disposition of fees, because this language unnecessarily duplicates language in Texas Finance Code, §348.505 and §353.505. Proposed amendments at §86.608(f) would clarify the 60-day target period to process a license application and the 60-day target period to set a requested hearing on an application denial, in accordance with Texas Finance Code, §348.504(c)-(d) and §353.504(c)-(d).

The proposal would repeal §84.609, which currently requires licensees to notify the OCCC of any relocation of a licensed location or registered office. The requirement to notify the OCCC of a main address relocation or branch office relocation will be moved to §84.607(a) as an advance change notice, as discussed earlier in this preamble.

Proposed amendments to §84.610 would revise requirements for license surrender. The proposed amendment would explain that a licensee may surrender a license by providing the information required by the OCCC's written instruction, in accordance with Texas Finance Code, §348.510 and §353.510, and that a surrender is effective when the OCCC approves the surrender.

The proposal would repeal §84.612, which is an implementation provision specifying that the statutory licensing requirement in Texas Finance Code, Chapter 348 was effective September 1, 2002, and that transactions before that effective date must comply with the provisions that were previously in effect. This rule is no longer necessary because of the amount of time that has passed since 2002, and because the licensing requirement's effective date is memorialized in Chapter 348's legislative history.

Proposed amendments to §84.613 would revise criminal history review requirements to explain that the OCCC will obtain criminal history record information through NMLS and to use the term "key individual." A proposed amendment to §84.613(f) would correct a citation to Texas Finance Code, §353.508.

Proposed amendments to §84.615 would remove a sentence about the return of original documents filed with a license application. This sentence is no longer necessary because the OCCC no longer accepts original paper documents with a license application. Another proposed amendments to §84.614 would correct a reference to the name of the Texas State Library and Archives Commission.

The proposal would repeal §84.616, which describes the requirement to display a license. This section is unnecessary because it contemplates a paper license at a physical location. Going forward, license information will be publicly available online through NMLS.

Proposed amendments to §84.617 would revise requirements for license renewal. A proposed amendment at §84.617(b) would explain that a licensee must maintain an active account in NMLS (or a designated successor system) in order to maintain and renew a license, and that renewal may be unavailable to a licensee that fails to maintain an active account. A proposed amendment at §84.617(d) would specify that the OCCC may send notice of delinquency of an annual assessment fee electronically through NMLS or by email to the primary company contact, removing current language that refers to a "master file" address under the OCCC's current system. Proposed amendments at §84.617(f) would remove language about the late filing fee for a registered office, and would specify that the reinstatement fee for a company or branch license is the fee under Texas Finance Code, §349.301 and §349.303(a).

The proposal would repeal §84.707, which currently describes recordkeeping requirements for retail sellers that assign retail installment sales contracts. This rule section overlaps substantially with §84.708. In order to streamline and simplify the text of the rules and minimize duplicative rule text, §84.707 will be repealed and consolidated into §84.708, as discussed in the next paragraph.

Proposed amendments to §84.708 would consolidate the recordkeeping requirements for motor vehicle sales finance licensees into a single rule, located at §84.708. Currently, §84.708 applies only to retail sellers collecting on retail installment sales contracts, but the current rule overlaps substantially with §84.707 and §84.709. Proposed amendments would simplify the title of the section and the text of §84.708(a) to apply generally to motor vehicle retail installment transactions. In order to maintain current recordkeeping requirements, proposed amendments throughout the section would limit certain provisions to retail sellers, and would limit certain provisions to licensees that hold, service, or collect on contracts. In particular, the provisions describing the contents of the retail installment sales transaction file at §84.708(e)(2) would be divided into paragraph (A) (describing records that all licensees must maintain), paragraph (B) (describing records that retail sellers must maintain), and paragraph (C) (describing records that licensees must maintain if they hold, service, or collect on contracts). Other changes throughout the section would reorganize and clarify text in order to streamline the rule while maintaining current requirements.

The proposal would repeal §84.709, which currently describes recordkeeping requirements for holders taking assignment of retail installment sales contracts. This rule section overlaps substantially with §84.708. In order to streamline and simplify the text of the rules and minimize duplicative rule text, §84.709 will be repealed and consolidated into §84.708, as discussed in the previous paragraph.

Fiscal Impact

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.

Public Benefits and Costs

Christine Graham, Director of Consumer Protection, has determined that for each year of the first five years the proposed rule changes are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules. In particular, the rule changes governing the transition to the NMLS licensing system will better enable the OCCC use its existing authority under Texas Finance Code, §14.109, to use NMLS as a licensing system, resulting in an improved user experience, efficiency for multistate entities, and an improved ability for consumers to access data about business licenses. Transitioning to NMLS will help minimize the costs of updating the OCCC's legacy technological systems.

In general, the OCCC anticipates that any economic costs for persons required to comply with the proposed rule changes will be minimal. Following an NMLS transition period earlier in 2026, motor vehicle sales finance licensees and commercial motor vehicle sales finance licensees have transitioned to NMLS. During the NMLS transition period, the OCCC attempted to minimize

costs by requiring existing licensees to provide only a core set of information and documents.

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.

Government Growth Impact

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 §84.708 to consolidate recordkeeping requirements into a single rule. The proposal would both expand and limit current §84.607 by adding references to certain cybersecurity-related information and removing unnecessary rule text. The proposal would limit current §§84.602, 84.604, and 84.615 by simplifying and streamlining current requirements. The proposal would repeal current §§84.603, 84.605, 84.606, 84.609, 84.612, 84.616, 84.707, and 84.709. 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.

Public Comments

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any written precomments on the rule text draft.

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. The commission invites any comments with information related to the cost, benefit, or effect of the proposed rule changes, including any applicable data, research, or analysis, from any person required to comply with the proposed rule changes or any other interested person. 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.

SUBCHAPTER F. LICENSING

7 TAC §§84.601, 84.602, 84.604, 84.607, 84.608, 84.610, 84.613, 84.615, 84.617

Statutory Authority and Affected Provisions

The rule changes are proposed under Texas Finance Code, §348.513, which authorizes the commission to adopt rules to

enforce and administer Texas Finance Code, Chapter 348, and under Texas Finance Code §353.513, which authorizes the commission to adopt rules to enforce and administer Texas Finance Code, Chapter 353. The rule changes are also proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 14 and Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 348 and 353.

§84.601. *Definitions.*

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 348 or 353, have the same meanings as defined in Chapter 348 or 353. The following words and terms, when used in this chapter, will have the following meanings, unless the context clearly indicates otherwise.

[(1) Affiliate--A business entity directly or indirectly through one or more intermediaries that is under common control with the applicant or licensee.]

(1) [(2)] Applicant--An entity that has filed the required forms and fees to operate under a license from the Office of Consumer Credit Commissioner pursuant to Texas Finance Code, Chapter 348.

(2) Branch--A location other than the licensed location where a licensee will originate, service, or collect on retail installment sales contracts. A branch may also be referred to as a "registered office."

(3) Commissioner--The Consumer Credit Commissioner of the State of Texas.

(4) Key individual--An individual owner, officer, director, or employee with a substantial relationship to the business of an applicant or licensee. The following are key individuals:

(A) any individual who is a direct owner of 10% or more of an applicant or licensee;

(B) any individual who is a control person or executive officer of an applicant or licensee, including an individual who has the power to direct management or policies of a company (e.g., president, chief executive officer, general partner, managing member, vice president, treasurer, secretary, chief operating officer, chief financial officer); and

(C) an individual designated as a key individual where necessary to fairly assess the applicant or licensee's financial responsibility, experience, character, general fitness, and sufficiency to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly.

[(4) Foreign entity--An entity formed under the laws of a jurisdiction other than the State of Texas.]

(5) Licensed location--The central or main location of the entity.

(6) NMLS--The Nationwide Multistate Licensing System.

(7) [(6)] OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

[(7) Principal party--An individual with a substantial relationship to the proposed business of the applicant. The following individuals are principal parties:]

[(A) a proprietor holding a 100% ownership interest;]

[(B) general partners;]

[(C) officers of privately held corporations, to include the chief executive officer or president, the chief operating officer or vice president of operations, and those with substantial responsibility for operations or compliance with Texas Finance Code, Chapter 348;]

[(D) directors of privately held corporations;]

[(E) individuals associated with publicly held corporations designated by the applicant as follows:]

[(i) officers as provided by subparagraph (C) of this paragraph (as if the corporation was privately held); or]

[(ii) three officers or similar employees with significant involvement in the corporation's activities governed by Texas Finance Code, Chapter 348. One of the persons designated must be responsible for assembling and providing the information required on behalf of the applicant and must sign the application for the applicant;]

[(F) voting members of a limited liability company;]

[(G) trustees and executors;]

[(H) officers of nonprofit organizations;]

[(I) individuals designated as principal parties where necessary to fairly assess the applicant's financial responsibility, experience, character, general fitness, and sufficiency to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly as required by the commissioner; and]

[(J) individuals may be accepted as principal parties in compliance with this paragraph upon approval by the commissioner for certain privately held entities with complex ownership structures. Three officers or similar employees with significant involvement in the entity's activities governed by Texas Finance Code, Chapter 348 may be designated upon approval by the commissioner.]

[(8) Privately held corporation--A corporation that is not publicly held.]

[(9) Publicly held corporation--A corporation:]

[(A) subject to the registration provisions of the Securities Act of 1933 in order to allow a public offering of voting stock; or]

[(B) owned directly or indirectly by a parent corporation that is subject to the registration provisions of the Securities Act of 1933.]

[(10) Registered offices--Each location other than the licensed location where a licensee will originate, service, or collect on retail installment sales contracts subject to Texas Finance Code, Chapter 348. The term also includes any additional assumed name that the licensee uses at a single location to engage in a Chapter 348 transaction.]

§84.602. *Filing of New Application.*

(a) NMLS. In order to submit a motor vehicle sales finance license application under Texas Finance Code, Chapter 348, or a commercial motor vehicle sales finance license application under Texas Finance Code, Chapter 353, an applicant must submit a complete, accurate, and truthful license application through NMLS (or a successor system designated by the OCCC), using the current form prescribed by the OCCC. An application is complete when it conforms to the OCCC's written instructions and necessary fees have been paid. The OCCC has made application checklists available through NMLS, outlining the necessary information for a license application. [An application for issuance of a new motor vehicle sales finance license issued under Texas Finance Code, Chapter 348 or 353 must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use

of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:]

[(1) Required application information. All questions must be answered.]

[(A) Application for license.]

[(i) Location. A physical street address must be listed for the applicant's proposed licensed location. A post office box or a mail box location at a private mail-receiving service generally may not be used. If the address has not yet been determined or if the application is for an inactive license, then the application must so indicate.]

[(ii) Compliance officer. The application must list a compliance officer. The compliance officer must be an individual responsible for overseeing compliance regarding the OCCC, and must be authorized to receive and respond to communications from the OCCC.]

[(iii) Registered agent. The registered agent must be designated by each applicant. The registered agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the registered agent is a natural person, the address must be a different address than the licensed location address. If the applicant is a corporation or a limited liability company, the registered agent should be the one on file with the Office of the Texas Secretary of State. If the registered agent is not the same as the agent filed with the Office of the Texas Secretary of State, then the applicant must submit a certification from the secretary of the company identifying the registered agent.]

[(iv) List of registered offices. Each additional location, other than the licensed location shown on the application, must be listed. The applicant should provide the assumed name (DBA), physical address, telephone number, and the person responsible for day-to-day operations for each registered office. A registered office is required for any additional assumed name that the licensee uses at a single location to engage in a Texas Finance Code, Chapter 348 or 353 transaction.]

[(v) Owners and principal parties.]

[(i) Proprietorships. The applicant must disclose the name of the individual holding a 100% ownership interest in the business and the name of any individual responsible for operating the business. If requested, the applicant must also disclose the names of the spouses of these individuals.]

[(ii) General partnerships. Each partner must be listed and the percentage of ownership stated. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided. General partnerships that register as limited liability partnerships should provide the same information as that required for general partnerships.]

[(iii) Limited partnerships. Each partner, general and limited, fulfilling the requirements of items (a) - (c) of this subclause must be listed and the percentage of ownership stated.]

[(a) General partners. The applicant should provide the complete ownership, regardless of percentage owned, for all general partners. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations

Code, §1.002, and a description of the ownership of each legal entity must be provided.]

[(b) Limited partners. The applicant should provide a complete list of all limited partners owning 10% or more of the partnership.]

[(c) Limited partnerships that register as limited liability partnerships. The applicant should provide the same information as that required for limited partnerships.]

[(iv) Corporations. Each officer and director must be named. Each shareholder holding 10% or more of the voting stock must be named if the corporation is privately held. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be included that describes each level of ownership of 10% or greater.]

[(v) Limited liability companies. Each "manager," "officer," and "member" owning 10% or more of the company, as those terms are defined in Texas Business Organizations Code, §1.002, and each agent owning 10% or more of the company must be listed. If a member is a legal entity and not a natural person, a narrative or diagram must be included that describes each level of ownership of 10% or greater.]

[(vi) Trusts or estates. Each trustee or executor, as appropriate, must be listed.]

[(vii) Nonprofit organizations. Each officer must be listed.]

[(viii) All entity types. If a parent entity is a different type of legal business entity than the applicant, the parent entity's owners and principal parties should be disclosed according to the parent's entity type.]

[(ix) Alternative filings for all entity types. The commissioner may also accept other filings submitted to a governmental authority that the commissioner deems to have information substantially equivalent in coverage and reliability to a filing under subclauses (i) - (viii) of this clause.]

[(B) Disclosure questions. All applicable questions must be answered. Questions requiring a "yes" answer must be accompanied by an explanatory statement and any appropriate documentation requested.]

[(C) Personal information.]

[(i) Personal affidavit. Each individual meeting the definition of "principal party" as defined in §84.601 of this title (relating to Definitions) must provide a personal affidavit. All requested information must be provided.]

[(ii) Personal questionnaire. Each individual meeting the definition of "principal party" as defined in §84.601 of this title must provide a personal questionnaire. Each question must be answered. If any question, except question 1, is answered "yes," an explanation must be provided.]

[(iii) Employment history. Each individual meeting the definition of "principal party" as defined in §84.601 of this title must provide an employment history. Each principal party should provide a continuous 10-year history, accounting for time spent as a student, unemployed, or retired. The employment history must also include the individual's association with the entity applying for the license.]

[(D) Additional requirements.]

[(i) Statement of experience. Each applicant should provide information that relates to the applicant's prior experience in the motor vehicle sales finance business. If the applicant or its princi-

pal parties do not have significant experience in the same type of business as planned for the prospective licensee, the applicant must provide a written statement explaining the applicant's relevant business experience or education, why the commissioner should find that the applicant has the requisite experience, and how the applicant plans to obtain the necessary knowledge to operate lawfully and fairly.]

[(ii) Business operating plan. An applicant must attach a brief narrative to the application explaining:]

[(i) an estimate of how many motor vehicles will be financed by the applicant each year;]

[(ii) whether the applicant will hold the retail installment sales contracts or whether the applicant will assign its retail installment sales contracts;]

[(iii) whether the applicant will only be accepting contracts from another entity (assignor); and, if so, list the types of entities; and]

[(iv) whether the collections will occur at the licensed location.]

[(iii) Statement of records. Each applicant must provide a statement of where records of Texas transactions will be maintained. If these records will be maintained at a location outside of Texas, the applicant must acknowledge responsibility for the travel cost associated with examinations in addition to the assessment fees or agree to make all records available for examination in Texas.]

[(E) Consent form. Each applicant must submit a consent form signed by an authorized individual. Electronic signatures will be accepted in a manner approved by the commissioner. The following are authorized individuals:]

[(i) If the applicant is a proprietor, the owner must sign.]

[(ii) If the applicant is a partnership, one general partner must sign.]

[(iii) If the applicant is a corporation, an authorized officer must sign.]

[(iv) If the applicant is a limited liability company, an authorized member or manager must sign.]

[(v) If the applicant is a trust or estate, the trustee or executor, as appropriate, must sign.]

[(F) Statement regarding previous installment transactions. Each applicant must submit a statement that it has or has not made or collected on any retail installment sales contract or accepted the cash payment for a motor vehicle in one or more installments from September 1, 2002, to date. This includes any contracts signed by applicant as seller that are subsequently assigned to a third party. If the applicant is purchasing another dealership and has permission to operate under an existing license, as described in §84.604 of this title (relating to Transfer of License; New License Application on Transfer of Ownership), the statement outlined by this subparagraph is not required. If the applicant has engaged in any of the referenced activities, the applicant must provide the following information:]

[(i) A list of all contracts used to finance the sale of a motor vehicle in one or more installments (whether the applicant was the original seller or whether the applicant became a holder). The list should include the name of the buyer, contract date, vehicle cash price, amount of down payment, net trade-in amount, total amount financed, payment frequency (monthly, semi-monthly, bi-weekly, weekly), total number of payments, and payment amount(s).]

[(ii) From the list provided by the applicant, copies of ten (10) complete files. The complete file includes, but is not limited to, the buyer's order, signed retail installment sales contract, payment history, certificate of title, and other documents related to that transaction. If there are fewer than ten (10) accounts, provide a complete copy of each file.]

[(2) Other required filings.]

[(A) Fingerprints.]

[(i) For all persons meeting the definition of "principal party" as defined in §84.601 of this title, a complete set of legible fingerprints must be provided. All fingerprints should be submitted in a format prescribed by the OCCC and approved by the Texas Department of Public Safety and the Federal Bureau of Investigation.]

[(ii) For limited partnerships, if the owners and principal parties under paragraph (1)(A)(v)(III)(a-) of this section does not produce a natural person, the applicant must provide a complete set of legible fingerprints for individuals who are associated with the general partner as principal parties.]

[(iii) For entities with complex ownership structures that result in the identification of individuals to be fingerprinted who do not have a substantial relationship to the proposed applicant, the applicant may submit a request to fingerprint three officers or similar employees with significant involvement in the proposed business. The request should describe the relationship and significant involvement of the individuals in the proposed business. The agency may approve the request, seek alternative appropriate individuals, or deny the request.]

[(iv) For individuals who have previously been licensed by the OCCC and principal parties of entities currently licensed, fingerprints are generally not required if the fingerprints are on record with the OCCC, are less than 10 years old, and have been processed by both the Texas Department of Public Safety and the Federal Bureau of Investigation. Upon request, individuals and principal parties previously licensed by the OCCC may be required to submit a new set of fingerprints in order to complete the OCCC's records.]

[(v) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Motor Vehicles), fingerprints are still required to be submitted under Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002.]

[(B) Contract forms. The applicant must provide information regarding the retail installment sales contract forms it intends to use for retail installment sales transactions involving ordinary vehicles. The applicant does not have to provide retail installment sales contract forms involving commercial vehicles.]

[(i) Custom forms. If a custom contract form is to be prepared, a preliminary draft or proof that is complete as to format and content and which indicates the number and distribution of copies to be prepared for each transaction must be submitted.]

[(ii) Stock forms. If an applicant purchases or plans to purchase stock forms from a supplier, the applicant must include a statement that includes the supplier's name and address and a list identifying the forms to be used, including the revision date of the form, if any.]

[(C) Entity documents.]

[(i) Partnerships. A partnership applicant must submit a complete and executed copy of the partnership agreement. This copy must be signed and dated by all partners. If the applicant is a lim-

ited partnership or a limited liability partnership; provide evidence of filing with the Office of the Texas Secretary of State.}]

{(ii) Corporations. A corporate applicant, domestic or foreign, must provide the following documents:}]

{(I) a complete copy of the certificate of formation or articles of incorporation, with any amendments;}]

{(II) a certification from the secretary of the corporation identifying the current officers and directors as listed in the owners and principal parties section of the application for license form;}]

{(III) if the registered agent is not the same as the one on file with the Office of the Texas Secretary of State, a certification from the secretary of the corporation identifying the registered agent;}]

{(IV) if requested, a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation;}]

{(V) if requested, a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed in the owners and principal parties section of the application for license form;}]

{(VI) if requested, a certificate of good standing from the Texas Comptroller of Public Accounts.}]

{(iii) Publicly held corporations. In addition to the items required for corporations, a publicly held corporation must file the most recent 10K or 10Q for the applicant or for the parent company.}]

{(iv) Limited liability companies. A limited liability company applicant, domestic or foreign, must provide the following documents:}]

{(I) a complete copy of the articles of organization;}]

{(II) a certification from the secretary of the company identifying the current officers and directors as listed in the owners and principal parties section of the application for license form;}]

{(III) if the registered agent is not the same as the one on file with the Office of the Texas Secretary of State, a certification from the secretary of the company identifying the registered agent;}]

{(IV) if requested, a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations;}]

{(V) if requested, a copy of the minutes of company meetings that record the election of all current officers and directors as listed in the owners and principal parties section of the application for license form;}]

{(VI) if requested, a certificate of good standing from the Texas Comptroller of Public Accounts.}]

{(v) Trusts. A copy of the relevant portions of the instrument that created the trust addressing management of the trust and operations of the applicant must be filed with the application.}]

{(vi) Estates. A copy of the instrument establishing the estate must be filed with the application.}]

{(vii) Foreign entities. In addition to the items required by this section, a foreign entity must provide a certificate of authority to do business in Texas, if applicable.}]

{(viii) Nonprofit organizations. The applicant must provide a copy of the relevant portions of the instrument creating the

nonprofit organization addressing management of the organization and operations of the applicant. A nonprofit applicant must also provide a copy of its filing with the Internal Revenue Service or other evidence to verify that the applicant is a nonprofit organization exempt from taxation under Internal Revenue Code of 1986, §501(c)(3).}]

{(ix) Formation document alternative. As an alternative to the entity-specific formation document applicable to the applicant's entity type (e.g., for a corporation, articles of incorporation), an applicant may submit a "certificate of formation" as defined in Texas Business Organizations Code, §1.002, if the certificate of formation provides the entity formation information required by this section for that entity type.}]

{(D) Assumed name certificates. For any applicant that does business under an "assumed name" as that term is defined in Texas Business and Commerce Code, §71.002, an assumed name certificate must be filed as provided in this subparagraph.}]

{(i) Unincorporated applicants. Unincorporated applicants using or planning to use an assumed name must file an assumed name certificate with the county clerk of the county where the proposed business is located in compliance with Texas Business and Commerce Code, Chapter 71. An applicant must provide a copy of the assumed name certificate that shows the filing stamp of the county clerk or, alternatively, a certified copy.}]

{(ii) Incorporated applicants. Incorporated applicants using or planning to use an assumed name must file an assumed name certificate in compliance with Texas Business and Commerce Code, Chapter 71. Evidence of the filing bearing the filing stamp of the Office of the Texas Secretary of State must be submitted or, alternatively, a certified copy.}]

{(3) Late filing. An applicant who desires to retroactively file a license application may do so by complying with Texas Finance Code, §349.303, and the rules adopted under this chapter.}]

{(b) Company license application. A company license application will include the following information and any other information listed in the OCCC's written instructions:

(1) A company form including the name of the applicant entity, contact information, registered agent, location of books and records, bank account information, legal status, and responses to disclosure questions.

(2) An individual form for each key individual, including name, contact information, and responses to disclosure questions.

(3) A business operating plan.

(4) An organizational chart showing the applicant's management divisions, officers, and ownership information for any affiliates, subsidiaries, and parent companies.

(5) A statement of experience detailing prior experience relevant to the license sought.

(6) A certificate of formation or other formation document.

(7) Any assumed names or other trade names that the applicant will use, and an assumed name certificate for each assumed name or other trade name.

(8) Franchise tax account information showing that the applicant entity is authorized to do business in Texas.

(9) A statement regarding previous motor vehicle retail installment transactions, with records for transactions that the applicant made, held, serviced, or collected before obtaining a license.

(10) For a license application involving a transfer of ownership, documentation of the transfer of ownership as described by §84.604 of this title (relating to Transfer of License; New License Application on Transfer of Ownership).

(c) Branch license application. A branch license application will include the following information and any other information listed in the OCCC's written instructions:

(1) A branch form including the address of the branch, contact details, and business activities.

(2) Any assumed name or other trade name that the applicant will use, and an assumed name certificate for each assumed name or other trade name.

(3) A statement regarding previous motor vehicle retail installment transactions at the branch, including the statement and information described by subsection (b)(10) of this section.

(4) For a license application involving a transfer of ownership at a branch, documentation of the transfer of ownership as described by §84.604 of this title.

(d) Supplemental information. The OCCC may require additional, clarifying, or supplemental information or documentation as necessary or appropriate to determine that an applicant meets the licensing requirements of Texas Finance Code, Chapter 348 or 353.

(e) Amendments to pending application. An applicant must immediately amend a pending application if any information changes requiring a materially different response from information provided in the original application.

(f) Late filing. An eligible applicant may obtain a company or branch license after the date on which the applicant was required to obtain the license by complying with Texas Finance Code, §349.301 and §349.303, and the rules adopted under this chapter.

§84.604. *Transfer of License; New License Application on Transfer of Ownership.*

(a) Purpose. This section describes the license application requirements when a licensed entity transfers [its license or] ownership of the entity. If a transfer of ownership occurs, the transferee must submit [either a license transfer application or] a new license application on transfer of ownership under this section.

(b) Definitions. The following words and terms, when used in this section, will have the following meanings:

[(1) Grandparent entity--A direct owner of a parent entity.]

(1) [(2)] License transfer--A sale, assignment, or transfer of a license under Texas Finance Code, Chapter 348 or 353.

[(3) Parent entity--A direct owner of a licensee or applicant.]

(2) [(4)] Permission to operate--A temporary authorization from the OCCC, allowing a transferee to operate under a transferor's license while final approval is pending for a license transfer application or a new license application on transfer of ownership.

(3) [(5)] Transfer of ownership--Any purchase or acquisition of control of a licensed entity (including acquisition by gift, devise, or descent), or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs. The term does not include a change in proportionate ownership that results in the exact same owners still owning the business (unless an owner that previously held less than 10% obtains an interest of 10% or more). [as defined in §84.605 of this title (relating to Change in Form or Proportionate Ownership)]. The term does not include a change in

ownership above the level of the grandparent entity.] Transfer of ownership includes the following:

(A) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

[(B) any purchase or acquisition of control of a licensed general partnership, in which a partner relinquishes that owner's entire interest or a new general partner obtains an ownership interest;]

[(C) any change in ownership of a licensed limited partnership interest in which:]

[(i) a limited partner owning 10% or more relinquishes that owner's entire interest;]

[(ii) a new limited partner obtains an ownership interest of 10% or more;]

[(iii) a general partner relinquishes that owner's entire interest; or]

[(iv) a new general partner obtains an ownership interest (transfer of ownership occurs regardless of the percentage of ownership exchanged of the general partner);]

[(D) any change in ownership of a licensed corporation in which:]

[(i) a new stockholder obtains 10% or more of the outstanding voting stock in a privately held corporation;]

[(ii) an existing stockholder owning 10% or more relinquishes that owner's entire interest in a privately held corporation;]

[(iii) any purchase or acquisition of control of 51% or more of a company that is the parent entity or controlling stockholder of a licensed privately held corporation occurs; or]

[(iv) any stock ownership changes that result in a change of control (i.e., 51% or more) for a licensed publicly held corporation occur;]

[(E) any change in the membership interest of a licensed limited liability company:]

[(i) in which a new member obtains an ownership interest of 10% or more;]

[(ii) in which an existing member owning 10% or more relinquishes that member's entire interest; or]

[(iii) in which a purchase or acquisition of control of 51% or more of any company that is the parent entity or controlling member of a licensed limited liability company occurs;]

(B) [(F)] any transfer of a substantial portion of the assets of a licensed entity under which a new entity controls business at a licensed location; and

(C) [(G)] any other purchase or acquisition of control of a licensed entity, or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs.

(4) [(6)] Transferee--The entity that controls business at a licensed location after a transfer of ownership.

(5) [(7)] Transferor--The licensed entity that controls business at a licensed location before a transfer of ownership.

(c) License transfer approval. No license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §348.512 and §353.512. To transfer a

license, a transferor may request surrender of its license after the OCCC approves the transferee's new license application on transfer of ownership. A license transfer is complete ~~[approved]~~ when the OCCC has approved the transferee's new license application and the transferor's license surrender ~~[issues its final written approval of a license transfer application]~~.

(d) Timing. No later than 30 days after the event of a transfer of ownership, the transferee must file a complete ~~[license transfer application or]~~ new license application on transfer of ownership in accordance with subsection (e) of this section. A transferee may file an application before this date.

(e) Application requirements.

(1) Generally. This subsection describes the application requirements for a license transfer application or a new license application on transfer of ownership. A transferee must submit the application in a format prescribed by the OCCC. The OCCC may accept prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. The transferee must pay appropriate fees in connection with the application.

(2) Documentation of transfer of ownership. The application must include documentation evidencing the transfer of ownership. The documentation should include one or more of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the purchase agreement or other evidence relating to the acquisition of the equity interest of a licensee that has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(3) Application information for new licensee. If the transferee does not hold a license at the time of the application, then the application must include the information required for new license applications under §84.602 of this title (relating to Filing of New Application). The instructions in §84.602 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a license at the time of the application, then the application must include amendments to the transferee's original license application describing the information that is unique to the transfer event, including disclosure questions, owners, and key individuals ~~[principal parties, and a new financial statement]~~, as provided in §84.602 of this title. The instructions in §84.602 of this title apply to these filings. Any key individual for ~~[The responsible person at]~~ the new location must file a complete individual form ~~[personal affidavit, personal questionnaire, and employment history]~~, if not previously filed. Other information required by §84.602 of this title need not be filed if the information on file with the OCCC is current and valid.

(5) Request for permission to operate. The application may include a request for permission to operate. The request must be in writing and signed by the transferor and transferee. The request must include all of the following:

(A) a statement by the transferor granting authority to the transferee to operate under the transferor's license while final approval of the application is pending;

(B) an acknowledgement that the transferor and transferee each accept responsibility to any consumer and to the OCCC for

any acts performed under the license while the permission to operate is in effect; and

(C) if the application is a new license application on transfer of ownership, an acknowledgement that the transferor will immediately surrender or inactivate its license if the OCCC approves the application.

(f) Permission to operate. If the application described by subsection (e) of this section includes a request for permission to operate and all required information, and the transferee has paid all fees required for the application, then the OCCC may issue a permission to operate to the transferee. A request for permission to operate may be denied even if the application contains all of the required information. The denial of a request for permission to operate does not create a right to a hearing. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license. Two companies may not simultaneously operate under a single license. A permission to operate terminates if the OCCC denies an application described by subsection (e) of this section.

(g) Transferee's authority to engage in business. If a transferee has filed a complete application including a request for permission to operate as described by subsection (e) of this section, by the deadline described by subsection (d) of this section, then the transferee may engage in business under Texas Finance Code, Chapter 348 or 353, as applicable. However, the transferee must immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. If the OCCC denies the application, then the transferee has a right to a hearing on the denial, as provided by §84.608(d) of this title (relating to Processing of Application).

(h) Responsibility.

(1) Responsibility of transferor. Before the transferee begins performing motor vehicle sales finance activity under a license, the transferor is responsible to any consumer and to the OCCC for all motor vehicle sales finance activity performed under the license.

(2) Responsibility of transferor and transferee. If a transferee begins performing motor vehicle sales finance activity under a license before the OCCC's final approval of an application described by subsection (e) of this section, then the transferor and transferee are each responsible to any consumer and to the OCCC for activity performed under the license during this period.

(3) Responsibility of transferee. After the OCCC's final approval of an application described by subsection (e) of this section, the transferee is responsible to any consumer and to the OCCC for all motor vehicle sales finance activity performed under the license. The transferee is responsible for any transactions that it purchases from the transferor. In addition, if the transferee receives a license transfer, then the transferee's responsibility includes all activity performed under the license before the license transfer.

§84.607. Required Notifications [Updating Application and Contact Information].

(a) Advance change notice. No later than the date of the change (or an earlier date specified in the OCCC's written instructions), a licensee must notify the OCCC of a change to any of the following information provided in the original license application: [Applicant's updates to license application information: Before a license application is approved, an applicant must report to the OCCC any information that would require a materially different answer than that given in the original license application and that relates to the qualifications for license within 14 calendar days after the person has knowledge of the information.]

(1) legal name of entity;

- (2) any assumed names of entity;
- (3) legal status of entity (e.g., change in organizational form from partnership to corporation);
- (4) names of direct owners or indirect owners;
- (5) names of affiliates or subsidiaries;
- (6) names of any key individuals;
- (7) main address; or
- (8) address of any branch location.

(b) Other required notifications. No later than 30 days after the licensee has knowledge of the information, a licensee must report the following information to the OCCC: [Licensee's updates to license application information. A licensee must report to the OCCC any information that would require a different answer than that given in the original license application within 30 calendar days after the licensee has knowledge of the information, if the information relates to any of the following:]

(1) any civil or regulatory actions against the licensee or key individuals that were not disclosed in the original application and would require a different answer than that given in the original license application [the names of principal parties];

(2) criminal history of the licensee or key individuals that was not disclosed in the original application;

(3) any bankruptcy of the licensee or a direct owner [actions by regulatory agencies]; or

(4) any breach of system security under Texas Business & Commerce Code, §521.053, affecting at least 250 residents of this state [court judgments].

(c) Contact information. Each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, including all mailing addresses, all phone numbers, and all email ~~[e-mail]~~ addresses. The OCCC may send notices to the mailing address or email address on file. It is a best practice for licensees to regularly review contact information on file with the OCCC to ensure that it is current and correct.

§84.608. Processing of Application.

(a) Initial review. A response to an incomplete application will ordinarily be made within 14 calendar days of receipt stating that the application is incomplete and specifying the information required for acceptance.

(b) Complete application. An application is complete when:

- (1) it conforms to the rules and published instructions;
- (2) all fees have been paid; and
- (3) all requests for additional information have been satisfied.

(c) Failure to complete application and deemed withdrawal. If a complete application has not been filed within 30 calendar days after notice of deficiency has been sent to the applicant, the application may be considered withdrawn [denied].

(d) Notice of intent to deny application. If the OCCC does not find that the eligibility requirements for a license have been met, then the OCCC will send a notice of intent to deny the license application to the applicant.

(e) Hearing. An affected applicant has 30 calendar days from the date of the notice of intent to deny the license application to re-

quest in writing a hearing to contest the denial. This hearing will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions), before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

~~[(f) Denial. If an application has been denied, the assessment fee will be refunded to the applicant. The investigation fee and the fingerprint processing fee in §84.611 of this title (relating to Fees) will be forfeited.]~~

(f) ~~[(g)]~~ Processing time.

(1) A license application will ordinarily be approved or denied within ~~[a maximum of]~~ 60 calendar days after the date of filing of a completed application.

(2) When a hearing is requested following an initial license application denial, the hearing will ordinarily be scheduled for a date [held] within 60 calendar days after a request for a hearing is made unless the parties agree to an extension of time. A final decision approving or denying the license application will be made after receipt of the proposal for decision from the administrative law judge.

(3) Exceptions. More time may be taken where good cause exists, as defined by Texas Government Code, §2005.004, for exceeding the established time periods in paragraphs (1) and (2) of this subsection.

§84.610. License Inactivation or Voluntary Surrender.

(a) Inactivation of active license. A licensee may cease operating under a motor vehicle sales finance license and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 10 calendar days prior to the anticipated inactivation date. Registered offices will be designated as closed when a license is inactivated. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the OCCC. The notice must include the new mailing address for the license, the effective date of the inactivation, and the fee for amending the license. A licensee must continue to pay the yearly renewal fees for an inactive license as outlined in §84.611 of this title (relating to Fees), or the license will expire.

(b) Activation of inactive license. A licensee may activate an inactive license by giving notice of the intended activation not less than 10 calendar days prior to the anticipated activation date. Registered offices must be listed and appropriate fees paid upon activation of a license. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the OCCC. The notice must include the contemplated new address of the licensed office, the approximate date of activation, and the fee for amending the license as outlined in §84.611 of this title.

(c) Voluntary surrender of license. Subject to subsection (d) ~~[(e)]~~ of this section, a licensee may request voluntary [voluntarily] surrender of a license by providing the information required by the OCCC's written instructions [written notice of the cessation of operations, a request to surrender the license, and by submitting the license certificate]. A surrender is effective when the OCCC approves the surrender. A voluntary surrender will result in cancellation of the license.

(d) Surrendering to avoid administrative action. A licensee may not surrender a license after an administrative action has been initiated without the written agreement of the OCCC.

§84.613. Denial, Suspension, or Revocation Based on Criminal History.

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §84.611 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain criminal history record information through NMLS [from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission]. The OCCC will continue to receive information on new criminal activity reported after the license application has [fingerprints have] been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and its key individuals [principal parties];

(2) reliable documents or testimony necessary to make a determination under subsection (c) of this section, including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid or are current.

(c) (No change.)

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §348.504(a) and §353.504(a). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its key individuals [principal parties]. If the applicant or a key individual [principal party] has been convicted of an offense described by subsections (c)(1) or (f)(1) of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its key individuals [principal parties] if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) - (3) of this section in its review of character and fitness.

(e) (No change.)

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

(1) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054, or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(2) - (3);

(2) errors or incomplete information in the license application;

(3) a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §348.508(3) and §353.508(3); and

(4) any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §§348.504(a), 348.508, 353.504(a), and 353.508. [353.5]

§84.615. Applications and Notices as Public Records.

Once a license application or notice is filed with the OCCC, it becomes a "state record" under Texas Government Code, §441.180(11), and "public information" under Government Code, §552.002. In response to a public information request, to the extent permitted by Government Code, Chapter 552 and other applicable law, the OCCC will withhold information deemed confidential by law (e.g., social security numbers, criminal history information). Under Government Code, §§441.190, 441.191 and 552.004, the original applications and notices must be preserved as "state records" and "public information" unless destroyed with the approval of the director and librarian of the Texas State Library and Archives [and Library] Commission under Government Code, §441.187. [Under Government Code, §441.191, the OCCC may not return any original documents associated with a motor vehicle sales finance license application or notice to the applicant or licensee.] An individual may request copies of a state record under the authority of the Texas Public Information Act, Government Code, Chapter 552.

§84.617. License Term, Renewal, and Expiration.

(a) License term and renewal. A new license is effective from the date of its issuance until December 31. A license must be renewed annually to remain effective. After renewal, a license is effective for a term of one year, from January 1 to December 31.

(b) NMLS. To maintain and renew a license, a licensee must maintain an active account in NMLS (or a successor system designated by the OCCC). The OCCC may make renewal unavailable to a licensee that fails to maintain an active account.

(c) [(b)] Due date for annual assessment fee. The annual assessment fee is due by December 1 of each year.

(d) [(e)] Notice of delinquency. If a licensee does not pay the annual assessment fee, the OCCC will send a notice of delinquency. Notice of delinquency is given when the OCCC sends the notice electronically through NMLS or by email to the primary company contact. [:]

[(1) by mail to the address on file with the OCCC as a master file address; or]

[(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address.]

(e) [(d)] Expiration. If a licensee does not pay the annual assessment fee, the license will expire on the later of:

(1) December 31 of each year; or

(2) the 16th day after notice of delinquency is given under subsection (c) of this section.

(f) [(e)] Reinstatement. As provided by Texas Finance Code, §349.301 and §349.303(a), if a company or branch license was in good standing when it expired, a person may reinstate the expired license not later than the 180th day after its expiration date by paying the annual assessment fee and a [\$1,000] late filing fee. [The late filing fee for a registered office is \$250 under Texas Finance Code, §349.302.]

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

Earliest possible date of adoption: November 29, 2026

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



7 TAC §§84.603, 84.605, 84.606, 84.609, 84.612, 84.616

The rule changes are proposed under Texas Finance Code, §348.513, which authorizes the commission to adopt rules to enforce and administer Texas Finance Code, Chapter 348, and under Texas Finance Code §353.513, which authorizes the commission to adopt rules to enforce and administer Texas Finance Code, Chapter 353. The rule changes are also proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 14 and Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 348 and 353.

§84.603. New Registered Offices.

§84.605. Change in Form or Proportionate Ownership.

§84.606. Amendments to Pending Application.

§84.609. Relocation of Licensed Offices.

§84.612. Implementation Provisions of Licensing.

§84.616. License Display.

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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SUBCHAPTER G. EXAMINATIONS

7 TAC §84.707, §84.709

The rule changes are proposed under Texas Finance Code, §348.513, which authorizes the commission to adopt rules to enforce and administer Texas Finance Code, Chapter 348, and under Texas Finance Code §353.513, which authorizes the commission to adopt rules to enforce and administer Texas Finance Code, Chapter 353. The rule changes are also proposed under Texas Finance Code, §11.304, which authorizes

the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 14 and Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 348 and 353.

§84.707. Files and Records Required (Retail Sellers Assigning Retail Installment Sales Contracts).

§84.709. Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts).

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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7 TAC §84.708

The rule changes are proposed under Texas Finance Code, §348.513, which authorizes the commission to adopt rules to enforce and administer Texas Finance Code, Chapter 348, and under Texas Finance Code §353.513, which authorizes the commission to adopt rules to enforce and administer Texas Finance Code, Chapter 353. The rule changes are also proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 14 and Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 348 and 353.

§84.708. Files and Records Required [(Retail Sellers Collecting Installments on Retail Installment Sales Contracts)].

(a) Applicability. The recordkeeping requirements of this section apply to motor vehicle retail installment sales transactions [retail sellers that service or collect installments on retail installment sales contracts] involving ordinary vehicles. The recordkeeping requirements of this section do not apply to motor vehicle retail installment sales transactions involving commercial vehicles.

(b) Records required for each retail installment sales transaction. Each licensee must maintain records with respect to the licensee's compliance with Texas Finance Code, Chapter 348 for each motor vehicle retail installment sales contract made, acquired, serviced, or held under Chapter 348 and make those records available for examination. For a retail seller, this [This] requirement includes any conditional delivery agreement or retail installment sales contract signed by a retail buyer for a vehicle that has been delivered, including contracts that are subsequently voided or canceled after a seller regains possession and ownership of the vehicle.

(c) Recordkeeping systems. The records required by this section may be maintained by using either an electronic recordkeeping system, a legible paper or manual recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. Licensees may maintain records on one or more recordkeeping systems, so long as the licensee is able to integrate records

pertaining to an account into one or more reports as required by this section. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(d) Record search requirements for licensees servicing or collecting on retail installment sales contracts.

(1) Open retail installment sales transactions. A licensee that services or collects on retail installment sales contracts must be able to access or produce a list of all open retail installment sales transactions. If the list of open transactions is accessed through an electronic system, the licensee must be able to generate a separate report of open transactions. Alternatively, a licensee may provide a list containing open and closed retail installment sales transactions as long as the open transactions are designated as "open."

(2) Alphabetical search. A licensee that services or collects on retail installment sales contracts must be able to access records in alphabetical order by retail buyer name for open and closed transactions during the record retention period required by subsection (e)(10) of this section. A licensee may comply with the alphabetical requirement by providing the commissioner's representative files by retail buyer name upon request by the commissioner's representative.

(3) Sorting or filtering. Upon request, if a licensee services or collects on retail installment sales contracts and maintains some or all transaction records electronically, a licensee must be able to sort or filter a records search by each of the following:

(A) the date of contract or date of sale;

(B) the retail buyer's name(s);

(C) the status of the transaction (open or closed); and

(D) whether the transaction has been assigned to another person and the name of any assignee.

(e) Records required.

(1) Retail installment sales transaction report.

(A) General requirements. Each licensee must maintain records sufficient to produce a retail installment sales transaction report that contains a listing of each Texas Finance Code, Chapter 348 retail installment sales contract made, held, serviced, or collected [or acquired] by the licensee. The report is only required to include those retail installment sales contracts that are subject to the record retention period of paragraph (10) of this subsection.

(B) Recordkeeping systems. The retail installment sales transaction report can be maintained either an electronic system or as a paper record, so long as the licensee can integrate the following information into a report. If the retail installment sales transaction report is maintained under a manual recordkeeping system, the retail installment sales transaction report must be updated within a reasonable time from the date the contract is made or acquired.

(C) Dealer's Motor Vehicle Inventory Tax Statement option for retail sellers.

(i) A licensee that is a retail seller may utilize a copy of the Dealer's Motor Vehicle Inventory Tax Statement (VIT Statement) submitted to the Texas Comptroller of Public Accounts to satisfy the requirements of this paragraph if the following two conditions are met when the VIT Statement is provided to the commissioner's representative:

(I) on a copy of the submitted VIT Statement, the licensee identifies (e.g., highlights, marks with abbreviations) which

transactions were cash transactions and which were retail installment sales transactions; and

(II) the licensee supplements the VIT Statement with the identification of all transactions in which VIT was not charged or collected.

(ii) A licensee who assigns account numbers and utilizes the Dealer's Motor Vehicle Inventory Tax Statement option must provide the account numbers for all retail installment sales transactions contained in the VIT Statement.

(D) Required information. A retail installment sales transaction report must contain the following information:

(i) the date of contract or date of sale (day, month, and year);

(ii) the retail buyer's name(s);

(iii) a method of identifying the vehicle, such as the last six digits of the vehicle identification number or the stock number; and

(iv) the account number.

(E) Sorting or filtering. Upon request, a licensee must be able to sort or filter the retail installment transaction report by each of the following:

(i) the date of contract or date of sale;

(ii) the retail buyer's name(s);

(iii) the status of the transaction (open or closed); and

(iv) whether the transaction has been assigned to another person and the name of any assignee.

(2) Retail installment sales transaction file. A licensee must maintain an electronic or paper copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) All licensees must maintain the following in the retail installment sales transaction file: [for all retail installment sales transactions];

(i) the retail installment sales contract signed by the retail buyer and the retail seller as required by Texas Finance Code, §348.101;

~~/(ii) if prepared by the retail seller, the purchase or buyer's order reflecting a written computation of the cash price of the vehicle and itemized charges, a description of the motor vehicle being purchased, and a description of each motor vehicle being traded in;]~~

(ii) ~~[(iii)]~~ the credit application and any other written or recorded information used in evaluating the application;

(iii) [(iv)] the original certificate of title to the vehicle, a certified copy of the negotiable certificate of title, or a copy of the front and back of either the original or certified copy of the title;

(iv) for any vehicle titled in Texas, a copy of the completed Texas Department of Motor Vehicles'/Texas Comptroller of Public Accounts' Application for Texas Certificate of Title (Form 130-U) signed by the retail buyer and seller that was filed with the appropriate county tax assessor-collector.

(v) for a retail installment sales transaction in which the licensee issues a certificate of insurance regarding insurance policies issued by or through the licensee in connection with the retail installment sales transaction, copies of the certificates of insurance.

[(v)] the Texas Department of Motor Vehicles' Title Application Receipt (Form VTR-500-RTS) or similar document evidencing the disbursement of the sales tax, and fees for license, title, and registration of the vehicle;]

(vi) for a retail installment sales transaction in which the licensee issues or takes assignment of a debt cancellation agreement, a complete copy of the debt cancellation agreement provided to the retail buyer, documentation of disbursement of the debt cancellation agreement fee to the retail seller or a third-party administrator, any written instruction to another person to make a full or partial refund of the debt cancellation agreement fee, and documentation of any refund provided upon cancellation or termination of the debt cancellation agreement. As an alternative to maintaining a complete copy of the debt cancellation agreement in the retail installment sales transaction file, the licensee may maintain all of the following:

(I) in the retail installment sales transaction file, a copy of any page of the debt cancellation agreement with a signature, a transaction-specific term, the cost of the debt cancellation agreement, or any blank space that has been filled in;

(II) in the licensee's general business files, a complete master copy of each debt cancellation agreement form used by the licensee during the period described by paragraph (10) of this subsection;

(III) in the licensee's general business files, policies and procedures that show a verifiable method for ensuring that the master copy of the debt cancellation agreement accurately reflects the debt cancellation agreement used in each individual transaction.

(vii) separate disclosures required by federal or state law, including the following:

(I) if disclosures required by the Truth in Lending Act are not incorporated into the text of the retail installment sales contract and the credit was extended for primarily for personal, family, or household purposes, a copy of the Truth in Lending statement required by Regulation Z, Truth in Lending, 12 C.F.R. §1026.18;

(II) if the transaction involves a cosigner, the notice to cosigner required by the Federal Trade Commission's Credit Practices Trade regulation, 16 C.F.R. §444.3.

(viii) [(vi)] copies of other agreements or disclosures signed by the retail buyer applicable to the retail installment sales transaction. [; and]

[(vii)] any records applicable to the retail installment transaction outlined by subparagraphs (B) - (U) of this paragraph.]

(B) If the licensee is the retail seller, then the licensee must maintain the following in the retail installment sales transaction file: [for a vehicle titled in Texas, a copy of the completed Texas Department of Motor Vehicles'/Texas Comptroller of Public Accounts'

Application for Texas Certificate of Title (Form 130-U) signed by the retail buyer and seller that was filed with the appropriate county tax assessor-collector.]

(i) if prepared by the retail seller, the purchase or buyer's order reflecting a written computation of the cash price of the vehicle and itemized charges, a description of the motor vehicle being purchased, and a description of each motor vehicle being traded in;

(ii) the Texas Department of Motor Vehicles' Title Application Receipt (Form VTR-500-RTS) or similar document evidencing the disbursement of the sales tax, and fees for license, title, and registration of the vehicle;

(iii) for a vehicle titled outside of Texas, a copy of the application for certificate of title for the buyer or the properly assigned evidence of ownership to the buyer including the Texas Comptroller of Public Accounts' Texas Motor Vehicle Sales Tax Exemption Certificate (Form 14-312).

(iv) for a retail installment sales transaction in which a power of attorney is necessary to transfer title to the buyer, a copy of the Texas Department of Motor Vehicles' Power of Attorney to Transfer a Motor Vehicle (Form VTR-271) or any other similar document used as a power of attorney.

(v) for a retail installment sales transaction involving a downpayment, a copy of any record or document relating to the downpayment including:

(I) receipts for cash downpayments;

(II) promissory notes or other documents evidencing the retail buyer's agreement to pay the cash downpayment over time;

(III) documents or forms signed by the retail buyer relating to a manufacturer's or distributor's rebate as permitted by Texas Finance Code, §348.404(a); and

(IV) documents or forms evidencing the payoff of any trade-in vehicle shown on the retail installment sales contract as required by Texas Finance Code, §348.408(c).

(vi) for a retail installment sales transaction involving a trade-in motor vehicle, a copy of the Texas Disclosure of Equity in Trade-In Motor Vehicle required by Texas Finance Code, §348.0091 and §84.204 of this title (relating to Disclosure of Equity in Retail Buyer's Trade-in Motor Vehicle).

(vii) for a retail installment sales contract that has an itemized charge for the inspection of a new or used motor vehicle, a copy of or access to the work order, inspection receipt, or other verifiable evidence that reflects that the inspection was performed including the date and cost of the inspection.

(viii) any conditional delivery agreement signed by the retail buyer or provided to the retail buyer.

(ix) for a retail installment sales transaction involving the disbursement of funds for money advanced pursuant to Texas Finance Code, §348.404(b) and (c), a copy of any document, form, or agreement relating to the disbursement of funds for money advanced.

(x) for a retail installment sales transaction in which the licensee issues a certificate of coverage regarding ancillary products issued by or through the licensee in connection with the retail installment sales transaction, records of the ancillary products (motor vehicle theft protection plans, service contracts, maintenance agreements, identity recovery service contracts, etc.) including all certificates of coverage.

(xi) for a retail installment sales transaction involving the sale of a trade-in credit agreement under Texas Finance Code, §348.125:

(I) a copy of the trade-in credit agreement and any written notice or disclosure provided to the retail buyer;

(II) evidence of the contractual liability reimbursement policy in effect at the time of the trade-in credit agreement, as required by Texas Finance Code, §348.125(c); and

(III) documentation of any refund provided upon cancellation of a trade-in credit agreement.

(xii) for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a trade-in credit agreement under Texas Finance Code, §348.125:

(I) a copy of the trade-in credit agreement;

(II) evidence of the amount of any credit applied under the trade-in credit agreement; and

(III) any documentation used to process a claim, including:

(-a-) any proof of insurance settlement documents obtained from the retail buyer;

(-b-) any accident record or vehicle condition report obtained to process a claim; and

(-c-) any supplemental claim records supporting the approval or denial of the claim.

(xiii) for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a depreciation benefit optional member program under Texas Occupations Code, §1304.003(a)(2)(C):

(I) evidence of the amount of any credit applied under the depreciation benefit optional member program; and

(II) any documentation obtained by the licensee to process the benefit.

(C) If the licensee holds, services, or collects on the retail installment sales contract, then the licensee must maintain the following in the retail installment sales transaction file: [for a vehicle titled outside of Texas, a copy of the application for certificate of title for the buyer or the properly assigned evidence of ownership to the buyer including the Texas Comptroller of Public Accounts' Texas Motor Vehicle Sales Tax Exemption Certificate (Form 14-312).]

(i) for a retail installment sales transaction that has been repaid in full, evidence of the discharge or release of lien as prescribed by 43 TAC §217.106 (relating to Discharge of Lien).

(ii) for a retail installment sales transaction in which the licensee agrees to defer all or part of one or more payments:

(I) a copy of any written deferment agreement; and

(II) any written notice to the retail buyer regarding a deferment under Texas Finance Code, §348.114(c).

(iii) for a retail installment sales transaction involving a repossession, the records required by subsection (f) of this section.

(iv) for a retail installment sales transaction involving insurance claims for credit life, credit accident and health, credit property, credit involuntary unemployment, collateral protection, or credit gap insurance:

(I) if the licensee does not negotiate or transact insurance claims on behalf of the retail buyer, records are not required to be maintained under this clause.

(II) if the licensee negotiates or transacts insurance claims on behalf of the retail buyer, supplemental insurance records, to the extent received by the licensee, supporting the settlement or denials of claims reported in the insurance loss records provided by paragraph (6) of this subsection including:

(-a-) Credit life insurance claims. The supplemental insurance records for credit life insurance claims must include the death certificate or other written records relating to the death of the retail buyer; proof of loss or claim form that discloses the amount of indebtedness at the time of death; check copies or electronic payment receipts that reflect the gross amount of the claim paid, including the amount of insurance benefits paid to beneficiaries other than the licensee which is in excess of the net amount necessary to pay the indebtedness; and the amount that is paid to beneficiaries other than the licensee.

(-b-) Credit accident and health insurance claims. The supplemental insurance records for credit accident and health insurance claims must include any written records relating to the disability, including statements from the physician, employer, and retail buyer; the proof of loss or claim form filed by the retail buyer; and copies of the checks or electronic payment receipts reflecting disability payments paid by the insurance carrier.

(-c-) Credit involuntary unemployment insurance claims. The supplemental insurance records for credit involuntary unemployment insurance claims must include any written document relating to the termination, layoff, or dismissal of the retail buyer; the proof of loss or claim form filed by the retail buyer; copies of the checks or electronic payment receipts reflecting the payment of the claim by the insurance carrier; and any other pertinent written record relating to the involuntary unemployment insurance claim.

(-d-) Collateral protection insurance claims. The supplemental insurance records for collateral protection insurance claims must include the law enforcement report, fire department report, or other written record reflecting the loss or destruction of any covered motor vehicle; the proof of loss or claim form filed by the retail buyer; copies of the checks or electronic payment receipts reflecting the payment of the claim by the insurance carrier; and any other pertinent written record relating to the collateral protection insurance claim.

(-e-) Credit gap insurance claims. The supplemental insurance records for credit gap insurance claims must include the gap insurance claim form; proof of loss and settlement check from the retail buyer's basic comprehensive, collision, or uninsured/underinsured policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle; documents that provide verification of the retail buyer's primary insurance deductible; if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss of the motor vehicle; if the accident was not investigated by a law enforcement officer, a copy of any law enforcement crash report filed in connection with the total loss of the motor vehicle; and copies of the checks reflecting the settlement amount paid by the licensee for the gap insurance claim.

(v) for a retail installment sales transaction involving the cancellation of a full or partial balance under a debt cancellation agreement for total loss or theft of an ordinary vehicle:

(I) the licensee must maintain copies of the following records on debt cancellation agreements for total loss or theft of ordinary vehicles that include insurance coverage as part of the retail buyer's responsibility to the holder:

(-a-) supplemental claim records supporting the settlement or denials of claims reported in the debt cancellation agreement loss records provided by paragraph (7) of this subsection including the debt cancellation request form;

(-b-) proof of loss and settlement payment from the retail buyer's primary comprehensive, collision, or uninsured/underinsured policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle;

(-c-) documents that provide verification of the retail buyer's primary insurance deductible;

(-d-) if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss of the motor vehicle;

(-e-) if the accident was not investigated by a law enforcement officer, a copy of the Texas Department of Public Safety's "Crash Report" (Form CR-2) filed in connection with the total loss of the motor vehicle; and

(-f-) evidence of the credit for the debt cancellation applied to the account or a copy of the check reflecting the balance canceled by the licensee; or

(II) the licensee must maintain copies of the following records on debt cancellation agreements for total loss or theft of ordinary vehicles in which the holder bears complete responsibility for the balance canceled after the total loss or theft:

(-a-) if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss of the motor vehicle;

(-b-) if the accident was not investigated by a law enforcement officer, a copy of the Texas Department of Public Safety's "Crash Report" (Form CR-2) filed in connection with the total loss of the motor vehicle; and

(-c-) any records relating to the denial of the cancellation of the balance under the debt cancellation agreement for total loss or theft of any ordinary vehicle.

{{(D) for a retail installment sales transaction in which a power of attorney is necessary to transfer title to the buyer, a copy of the Texas Department of Motor Vehicles' Power of Attorney to Transfer a Motor Vehicle (Form VTR-271) or any other similar document used as a power of attorney.}}

{{(E) for a retail installment sales transaction involving a downpayment, a copy of any record or document relating to the downpayment including:}}

{{(i) receipts for cash downpayments;}}

{{(ii) promissory notes or other documents evidencing the retail buyer's agreement to pay the cash downpayment over time;}}

{{(iii) documents or forms signed by the retail buyer relating to a manufacturer's or distributor's rebate as permitted by Texas Finance Code, §348.404(a); and}}

{{(iv) documents or forms evidencing the payoff of any trade-in vehicle shown on the retail installment sales contract as required by Texas Finance Code, §348.408(c).}}

{{(F) for a retail installment sales transaction involving a trade-in motor vehicle, a copy of the Texas Disclosure of Equity in Trade-In Motor Vehicle required by Texas Finance Code, §348.0091 and §84.204 of this title (relating to Disclosure of Equity in Retail Buyer's Trade-in Motor Vehicle).}}

{{(G) for a retail installment sales contract that has an itemized charge for the inspection of a new or used motor vehicle, a copy of or access to the work order, inspection receipt, or other verifi-

able evidence that reflects that the inspection was performed including the date and cost of the inspection.}}

{{(H) for a retail installment sales transaction involving the disbursement of funds for money advanced pursuant to Texas Finance Code, §348.404(b) and (c), a copy of any document, form, or agreement relating to the disbursement of funds for money advanced.}}

{{(I) for a retail installment sales transaction in which the licensee issues a certificate of insurance regarding insurance policies issued by or through the licensee in connection with the retail installment sales transaction, copies of the certificates of insurance.}}

{{(J) for a retail installment sales transaction in which the licensee issues a debt cancellation agreement, a complete copy of the debt cancellation agreement provided to the retail buyer, documentation of disbursement of the debt cancellation agreement fee to the retail seller or a third-party administrator, any written instruction to another person to make a full or partial refund of the debt cancellation agreement fee, and documentation of any refund provided upon cancellation or termination of the debt cancellation agreement. As an alternative to maintaining a complete copy of the debt cancellation agreement in the retail installment sales transaction file, the licensee may maintain all of the following:}}

{{(i) in the retail installment sales transaction file, a copy of any page of the debt cancellation agreement with a signature, a transaction-specific term, the cost of the debt cancellation agreement, or any blank space that has been filled in;}}

{{(ii) in the licensee's general business files, a complete master copy of each debt cancellation agreement form used by the licensee during the period described by paragraph (10) of this subsection;}}

{{(iii) in the licensee's general business files, policies and procedures that show a verifiable method for ensuring that the master copy of the debt cancellation agreement accurately reflects the debt cancellation agreement used in each individual transaction.}}

{{(K) for a retail installment sales transaction in which the licensee issues a certificate of coverage regarding ancillary products issued by or through the licensee in connection with the retail installment sales transaction, records of the ancillary products (motor vehicle theft protection plans, service contracts, maintenance agreements, identity recovery service contracts, etc.) including all certificates of coverage.}}

{{(L) for a retail installment sales transaction involving insurance claims for credit life, credit accident and health, credit property, credit involuntary unemployment, collateral protection, or credit gap insurance:}}

{{(i) if the licensee does not negotiate or transact insurance claims on behalf of the retail buyer, records are not required to be maintained under this subparagraph.}}

{{(ii) if the licensee negotiates or transacts insurance claims on behalf of the retail buyer, supplemental insurance records, to the extent received by the licensee, supporting the settlement or denials of claims reported in the insurance loss records provided by paragraph (6) of this subsection including:}}

{{(I) Credit life insurance claims. The supplemental insurance records for credit life insurance claims must include the death certificate or other written records relating to the death of the retail buyer; proof of loss or claim form that discloses the amount of indebtedness at the time of death; check copies or electronic payment receipts that reflect the gross amount of the claim paid; including the amount of insurance benefits paid to beneficiaries other than the

licensee which is in excess of the net amount necessary to pay the indebtedness; and the amount that is paid to beneficiaries other than the licensee.}]

{(II)} Credit accident and health insurance claims. The supplemental insurance records for credit accident and health insurance claims must include any written records relating to the disability, including statements from the physician, employer, and retail buyer; the proof of loss or claim form filed by the retail buyer; and copies of the checks or electronic payment receipts reflecting disability payments paid by the insurance carrier.}]

{(III)} Credit involuntary unemployment insurance claims. The supplemental insurance records for credit involuntary unemployment insurance claims must include any written document relating to the termination, layoff, or dismissal of the retail buyer; the proof of loss or claim form filed by the retail buyer; copies of the checks or electronic payment receipts reflecting the payment of the claim by the insurance carrier; and any other pertinent written record relating to the involuntary unemployment insurance claim.}]

{(IV)} Collateral protection insurance claims. The supplemental insurance records for collateral protection insurance claims must include the law enforcement report, fire department report, or other written record reflecting the loss or destruction of any covered motor vehicle; the proof of loss or claim form filed by the retail buyer; copies of the checks or electronic payment receipts reflecting the payment of the claim by the insurance carrier; and any other pertinent written record relating to the collateral protection insurance claim.}]

{(V)} Credit gap insurance claims. The supplemental insurance records for credit gap insurance claims must include the gap insurance claim form; proof of loss and settlement check from the retail buyer's basic comprehensive, collision, or uninsured/underinsured policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle; documents that provide verification of the retail buyer's primary insurance deductible; if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss of the motor vehicle; if the accident was not investigated by a law enforcement officer, a copy of any law enforcement crash report form filed in connection with the total loss of the motor vehicle; and copies of the checks reflecting the settlement amount paid by the licensee for the gap insurance claim.}]

{(M)} for a retail installment sales transaction involving the cancellation of a full or partial balance under a debt cancellation agreement for total loss or theft of an ordinary vehicle.}]

{(i)} the licensee must maintain copies of the following records on debt cancellation agreements for total loss or theft of ordinary vehicles that include insurance coverage as part of the retail buyer's responsibility to the holder.}]

{(f)} supplemental claim records supporting the settlement or denials of claims reported in the debt cancellation agreement loss records provided by paragraph (7) of this subsection including the debt cancellation request form.}]

{(II)} proof of loss and settlement payment from the retail buyer's primary comprehensive, collision, or uninsured/underinsured policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle.}]

{(III)} documents that provide verification of the retail buyer's primary insurance deductible.}]

{(IV)} if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss of the motor vehicle.}]

{(V)} if the accident was not investigated by a law enforcement officer, a copy of the Texas Department of Public Safety's "Crash Report" (Form CR-2) filed in connection with the total loss of the motor vehicle; and}]

{(VI)} evidence of the credit for the debt cancellation applied to the account or a copy of the check reflecting the balance canceled by the licensee; or}]

{(ii)} the licensee must maintain copies of the following records on debt cancellation agreements for total loss or theft of ordinary vehicles in which the holder bears complete responsibility for the balance canceled after the total loss or theft.}]

{(f)} if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss of the motor vehicle.}]

{(II)} if the accident was not investigated by a law enforcement officer, a copy of the Texas Department of Public Safety's "Crash Report" (Form CR-2) filed in connection with the total loss of the motor vehicle; and}]

{(III)} any records relating to the denial of the cancellation of the balance under the debt cancellation agreement for total loss or theft of any ordinary vehicle.}]

{(N)} for a retail installment sales transaction where separate disclosures are required by federal or state law including the following.}]

{(i)} a transaction where disclosures required by the Truth in Lending Act are not incorporated into the text of the retail installment sales contract and the credit was extended for primarily for personal, family, or household purposes, a copy of the Truth in Lending statement required by Regulation Z, Truth in Lending, 12 C.F.R. §1026.18.}]

{(ii)} a transaction involving a cosigner, the notice to cosigner required by the Federal Trade Commission's Credit Practices Trade regulation, 16 C.F.R. §444.3.}]

{(O)} for a retail installment sales transaction that has been repaid in full, evidence of the discharge or release of lien as prescribed by 43 TAC §217.106 (relating to Discharge of Lien).}]

{(P)} for a retail installment sales transaction involving a repossession, the records required by subsection (f) of this section.}]

{(Q)} for a retail installment sales transaction in which the licensee agrees to defer all or part of one or more payments.}]

{(i)} a copy of any written deferment agreement; and}]

{(ii)} any written notice to the retail buyer regarding a deferment under Texas Finance Code, §348.114(c).}]

{(R)} for a retail installment sales transaction involving the sale of a trade-in credit agreement under Texas Finance Code, §348.125.}]

{(i)} a copy of the trade-in credit agreement and any written notice or disclosure provided to the retail buyer.}]

{(ii)} evidence of the contractual liability reimbursement policy in effect at the time of the trade-in credit agreement, as required by Texas Finance Code, §348.125(c); and}]

~~{(iii) documentation of any refund provided upon cancellation of a trade-in credit agreement;}~~

~~{(S) for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a trade-in credit agreement under Texas Finance Code, §348.125;}~~

~~{(i) a copy of the trade-in credit agreement;}~~

~~{(ii) evidence of the amount of any credit applied under the trade-in credit agreement; and}~~

~~{(iii) any documentation used to process a claim, including;}~~

~~{(t) any proof of insurance settlement documents obtained from the retail buyer;}~~

~~{(H) any accident record or vehicle condition report obtained to process a claim; and}~~

~~{(III) any supplemental claim records supporting the approval or denial of the claim.}~~

~~{(T) for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a depreciation benefit optional member program under Texas Occupations Code, §1304.003(a)(2)(C);}~~

~~{(i) evidence of the amount of any credit applied under the depreciation benefit optional member program; and}~~

~~{(ii) any documentation obtained by the licensee to process the benefit.}~~

~~{(U) any conditional delivery agreement signed by the retail buyer or provided to the retail buyer.}~~

(3) Account record for each retail installment sales contract (including payment and collection contact history). A licensee that holds, services, or collects on retail installment contracts must maintain a separate electronic or paper record ~~[must be maintained]~~ covering each retail installment sales contract. The electronic or paper account record must be readily available by reference to either a retail buyer's name or account number.

(A) Required information. The account record for each retail installment sales contract must contain at least the following information, unless stated otherwise:

(i) account number as recorded in the retail installment sales transaction report;

(ii) date of contract;

(iii) name and address of retail buyer;

(iv) payment history information:

(I) itemized payment entries showing date payment received; dual postings are acceptable if date of posting is other than date of receipt;

(II) for a transaction using the true daily earnings method, if requested during an examination or investigation, a breakdown for each payment showing the amount applied toward principal, time price differential, late charges, and any other charges;

(III) if requested during an examination or investigation, a payoff amount that denotes amounts applied to principal, time price differential, default, deferment, or other authorized charges;

(v) for a retail installment sales contract where the licensee receives or issues a refund of insurance charges, debt cancellation agreements, or authorized ancillary products, a licensee is respon-

sible for maintaining sufficient documentation of any refund including final entries and is also responsible for providing refunds to the retail buyer or correctly applying refunds to the retail buyer's account. Refund amounts must be itemized to show:

(I) time price differential refunded, if any;

(II) the amount of any insurance charges refunded;

(III) the amount of any debt cancellation agreement fees refunded;

(IV) the amount of any authorized ancillary products charges refunded;

(vi) collection contact history, including a written record of:

(I) all collection contacts made by a licensee with the retail buyer or any other person in connection with the collection of amounts due under a motor vehicle retail installment sales contract;

(II) all collection contacts made by the retail buyer with the licensee in connection with the collection of amounts due under a motor vehicle retail installment sales contract;

(III) for the collection contacts in subclauses (I) and (II) of this clause, the written record must include the date, method of contact, contacted party, person initiating the contact, and a summary of the contact;

(IV) copies of individual collection notices or letters or references to standard collection letters sent to the retail buyer.

(B) Recommended information. In addition to the required information under subparagraph (A) of this paragraph, it is recommended that the account record for each retail installment sales contract contain the following information:

(i) retail installment sales contract payment schedule and terms itemized to show:

(I) number of installments;

(II) due date of installments;

(III) amount of each installment; and

(IV) maturity date;

(ii) telephone number of retail buyer;

(iii) names and addresses of co-retail buyer or other obligors, if any;

(iv) amount financed;

(v) total time price differential charge;

(vi) total of payments;

(vii) amount of premium charges for insurance products;

(viii) amount of fees charged for debt cancellation agreements.

(C) Corrective entries. A licensee may make corrective entries to the account record for each retail installment sales contract if the corrective entry is justified. A licensee must maintain the reason and supporting documentation for each corrective entry made to the account record. The reason for the corrective entry may be recorded in the collection contact history of the account record. The supporting documentation justifying the corrective entry can be maintained in the individual account record for each retail installment sales contract

or properly stored and indexed in a licensee's optically imaged record-keeping system. If a licensee manually maintains the account record, the licensee must properly correct an improper entry by drawing a single line through the improper entry and entering the correct information above or below the improper entry. No erasures or other obliterations may be made on the payments received or collection contact history section of the manual account record for each retail installment sales contract.

(4) Assignment information.

(A) Required information. Assignment information must cover any Texas Finance Code, Chapter 348 retail installment sales contract made by or acquired by the licensee that is assigned from its licensed [or registered] location. The assignment information must show the name of the retail buyer, the account number or other unique number given to the retail buyer, the date of assignment, and the name and address to which the accounts are assigned.

(B) Electronic recordkeeping systems. If a licensee is able to produce an assignment report containing the required information provided in subparagraph (A) of this paragraph electronically without any additional programming costs, the licensee must produce the report upon request. If the licensee's software programs are unable to produce an assignment report containing the required information provided in subparagraph (A) of this paragraph, the licensee may maintain assignment information for each individual retail installment sales transaction in the retail installment sales transaction file. A licensee must be able to access assignment information for a specific transaction as requested by the commissioner's representative.

(C) Manual recordkeeping systems. If a licensee is not able to produce an assignment report as provided in subparagraph (B) of this paragraph, the licensee may maintain assignment information for each individual retail installment sales transaction in the retail installment sales transaction file. A licensee must be able to access assignment information for a specific transaction as requested by the commissioner's representative.

(D) Securitization or financing exception. If the servicing rights are retained by the licensee, then the licensee is not required to include in the assignment report retail installment sales transactions that were assigned to a legal entity as part of a securitization agreement. A licensee is also not required to include in the assignment report retail installment sales transactions that have been pledged as collateral for a bona fide financing arrangement to the licensee.

(5) General business and accounting records. General business and accounting records concerning retail installment sales transactions must be maintained. The licensee is not required to produce information protected under the attorney-client privilege or work product privilege. The business and accounting records must include receipts, documents, or other records for each disbursement made by the licensee at the retail buyer's direction or request, on his behalf, or for his benefit, that is charged to the retail buyer, including:

(A) for a retail seller, the Texas Comptroller of Public Accounts' Dealer Motor Vehicle Inventory Tax Statement (Form 50-246);

(B) for a retail seller, the Texas Comptroller of Public Accounts' Texas Motor Vehicle Seller-Financed Sales Tax Report (Form 14-117); and

(C) repossession, sequestration, disposition, or legal fees relating to repossession, sequestration, or disposition.

(6) Insurance loss records. Each licensee who negotiates or transacts the filing of insurance claims must maintain a register or

be able to generate a report, electronic or paper, reflecting information to the extent received by the licensee on credit life, credit accident and health, credit property, credit involuntary unemployment, and single-interest insurance claims whether paid or denied by the insurance carrier. If the reason for the denial of a credit life insurance or credit accident and health insurance claim is based upon the medical records of the retail buyer, supplemental records supporting the denial of the claim must be made available upon request.

(7) Debt cancellation agreement for total loss or theft loss records. Each licensee who cancels entire balances or who cancels only partial balances under debt cancellation agreements must maintain a register or be able to generate a report, paper or electronic, that reflects agreements that were either satisfied or denied. This register or report must show the name of the retail buyer, the account number, an indication of whether the agreement was satisfied or denied (e.g., "paid," "denied"), and the date of satisfaction or denial.

(8) Adverse action records. Each licensee must maintain adverse action records regarding all applications relating to Texas Finance Code, Chapter 348 retail installment sales transactions. Adverse action records must be maintained according to the record retention requirements contained in Regulation B, Equal Credit Opportunity Act, 12 C.F.R. §1002.12(b). The current retention periods are 25 months for consumer credit and 12 months for business credit.

(9) Trade-in credit agreement records. Each licensee that enters a trade-in credit agreement or provides a benefit in connection with a trade-in credit agreement must:

(A) maintain a copy of any contractual liability reimbursement policy related to the trade-in credit agreement, as required by Texas Finance Code, §348.125(c); and

(B) maintain a register or be able to generate a report, paper or electronic, that reflects agreements that were either satisfied or denied. This register or report must show the name of the retail buyer, the account number, and the date of satisfaction or denial.

(10) Retention and availability of records. All books and records required by this subsection must be available for inspection at any time by Office of Consumer Credit Commissioner staff, and must be retained for a period of four years from the date of the contract, two years from the date of the final entry made thereon, whichever is later, or a different period of time if required by federal law. Upon notification of an examination pursuant to Texas Finance Code, §348.514(f), the licensee must be able to produce or access required books and records within a reasonable time at the licensed location or registered office specified on the license. The records required by this subsection must be available or accessible at an office in the state designated by the licensee except when the retail installment sales transactions are transferred under an agreement which gives the commissioner access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

(f) Repossession records for licensees that repossess vehicles.

(1) Repossession report. A licensee must be able to access or produce a list of all retail installment sales transactions involving repossession by the licensee. If the list of repossessions is accessed through an electronic system, the licensee must be able to generate a separate report of repossessions. If the repossession report is maintained under a manual recordkeeping system, the licensee must maintain a current list of accounts in repossession. A manual repossession report must be updated within a reasonable time from the date of repos-

session. The repossession report must include the retail buyer's name, account number, and date of repossession. If accounts have been subsequently assigned, the assignment must be noted in the repossession report as well as on the record of assigned accounts as prescribed in subsection (e)(4) of this section.

(2) Required information. For a retail installment sales transaction involving the repossession of the vehicle, the following records must be maintained, unless otherwise specified:

(A) a condition report indicating the condition of the collateral, if prepared by the licensee, the licensee's agent, or any independent contractor hired to perform the repossession;

(B) any invoices or receipts for any reasonable and authorized out-of-pocket expenses that are assessed to the buyer and incurred in connection with the repossession or sequestration of the vehicle including cost of storing, reconditioning, and reselling the vehicle;

(C) for a vehicle disposed of in a public or private sale as permitted by the Texas Business and Commerce Code, §9.610, the following documents:

(i) one of the three following notices:

(I) for a transaction not involving consumer goods, a copy of any Notification of Disposition of Collateral letter sent to the retail buyer and other obligors as required by Texas Business and Commerce Code, §9.613;

(II) for a transaction involving consumer goods, a copy of any Notice of Our Plan to Sell Property as sent to the retail buyer and other obligors as required by Texas Business and Commerce Code, §9.614; or

(III) a copy of the waiver of the notice of intended disposition prescribed by subclause (I) or (II) of this clause, as applicable, signed by the retail buyer and other obligors after default;

(ii) copies of evidence of the type or manner of private sale that was conducted. These records must show that the manner of the disposition was commercially reasonable, such as circumstances surrounding a dealer only auction, internet sale or other type of private disposition;

(iii) copies of evidence of the type or manner of public sale that was conducted. These records must show that the manner of the disposition was commercially reasonable, such as documentation of the date, place, manner of sale of the vehicle, and amounts received for disposition of the vehicle;

(iv) the bill of sale showing the name and address of the purchaser of the repossessed collateral and the purchase price of the vehicle;

(v) for a disposition or sale of collateral creating a surplus balance, a copy of the check representing the payment of the surplus balance paid to the retail buyer or other person entitled to the surplus;

(vi) for a disposition or sale of collateral resulting in a surplus or deficiency, a copy of the explanation of calculation of surplus or deficiency as required by Texas Business and Commerce Code, §9.616, if applicable;

(vii) a copy of the waiver of the deficiency letter if the retail seller elects to waive the deficiency balance in lieu of sending the explanation of calculation of surplus or deficiency form, if applicable;

(D) for a vehicle disposed of using the strict foreclosure method as permitted by the Texas Business and Commerce Code, §9.620 and §9.621, the following documents:

(i) one of the three following notices;

(I) for a transaction not involving consumer goods and where less than 60% of the cash price of the vehicle has been paid, a copy of the notice of proposal to accept collateral in full or partial satisfaction of the obligation;

(II) for a transaction involving consumer goods, a copy of the notice of proposal to accept collateral in full satisfaction of the obligation; or

(III) for a transaction where more than 60% of the cash price of the vehicle has been paid, a copy of the debtor or obligor's waiver of compulsory disposition of collateral signed by the retail buyers and other obligors after default;

(ii) for a transaction where the retail buyer rejects the offer under clause (i)(I) or (II) of this subparagraph, a copy of the retail buyer's signed objection to retention of the collateral;

(iii) copies of the records reflecting the partial or total satisfaction of the obligation; and

(E) for a vehicle disposed by another authorized method pursuant to the Texas Business and Commerce Code, Chapter 9, a copy of any and all records or documents relating to the disposition of the collateral

(g) Information security program. A licensee must maintain written policies and procedures for an information security program to protect retail buyers' customer information, as required by the Federal Trade Commission's Safeguards Rule, 16 C.F.R. part 314. If a licensee maintains customer information concerning 5,000 or more consumers, then the licensee must maintain a written incident response plan and written risk assessments, as required by 16 C.F.R. §314.4.

(h) Data breach notifications. A licensee must maintain the text of any data breach notification provided to retail buyers, including any notification under Texas Business & Commerce Code, §521.053, for a period of four years from the date of the notification. A licensee must maintain any data breach notification provided to a government agency, including any notification provided to the Office of the Attorney General under Texas Business & Commerce Code, §521.053, for a period of four years from the date of the notification.

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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CHAPTER 90. CHAPTER 342, PLAIN LANGUAGE CONTRACT PROVISIONS

The Finance Commission of Texas (commission) proposes amendments to §90.104 (relating to Non-Standard Contract Filing Procedures), §90.203 (relating to Model Clauses), §90.204 (relating to Model Contracts; Permissible Changes), §90.403 (relating to Model Clauses), and §90.404 (relating to Model Contracts; Permissible Changes); and proposes the repeal of §90.501 (relating to Purpose), §90.502 (relating to Contract Provisions), §90.503 (relating to Model Clauses), §90.504 (relating to Model Contracts; Permissible Changes), §90.601 (relating to Purpose), §90.602 (relating to Contract Provisions), §90.603 (relating to Model Clauses), and §90.604 (relating to Model Contracts; Permissible Changes) in 7 TAC Chapter 90, concerning Chapter 342, Plain Language Contract Provisions.

Summary of Proposed Rule Changes

The rules in 7 TAC Chapter 90 govern plain language contracts for regulated lenders. In general, the purpose of the proposed rule changes to 7 Chapter 90 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. The proposed rule changes also incorporate recommendations from the Texas Regulatory Efficiency Office.

Proposed amendments to §90.104 would adjust the maximum Flesch-Kincaid grade level for certain loan contracts. Under Texas Finance Code, §341.502(a), consumer loan contracts under Texas Finance Code, Chapter 342 must be "written in plain language designed to be easily understood by the average consumer." Under Texas Finance Code, §341.502(b), if a regulated lender uses a loan contract other than a model contract adopted by the commission, then the lender must submit the contract to the OCCC for review. Currently, §90.104 describes the requirements for submitting these non-standard contracts to the OCCC. The rule includes maximum Flesch-Kincaid grade levels for loan contracts. The Flesch-Kincaid grade level is a standard measure of readability corresponding to grade level, based on average sentence length and complexity. Proposed amendments to §90.104(c)(4) would adjust the maximum Flesch-Kincaid grade level score from 8 to 9 for loan contracts under Chapter 342, Subchapter F. The OCCC understands that the rule's current maximum grade level has created difficulties in preparing compliant Subchapter F loan contracts, and has limited lenders' ability to modernize their contracts while also including statutorily required disclosures. Adjusting the grade level to 9 would align the Subchapter F requirement with the requirement for Subchapter E loan contracts, while still helping to ensure that the loan contracts can be understood by the average consumer.

Proposed amendments to §90.203 would consolidate two versions of a model clause into a single figure. Currently, §90.203(b)(2) contains two different versions of the itemization of amount financed for Subchapter E loan contracts: one for loans where the administrative fee is financed, and one for loans where the administrative fee is paid in cash. The proposed amendments at §90.203(b)(2) would create a new figure with brackets showing the additional text if the administrative fee is paid in cash. The new figure would combine current figures 7 TAC §90.203(b)(2)(A) and 7 TAC §90.203(b)(2)(B) while maintaining lenders' ability to use both versions of the clause.

Proposed amendments to §90.204 would revise the model contract for a Subchapter E true daily earnings loan. In the model contract at §90.204(a)(8), the proposed amendments would remove strikethrough text that was inadvertently left in the contract in a previous revision.

Proposed amendments to §90.403 would revise the model clause that contains the definition of "Electronic Funds Transfer" for a second-lien home equity loan security document. The amendments would streamline the definition by citing to the definition of "electronic fund transfer" under the Electronic Fund Transfer Act, 15 U.S.C. §1693a(7), and Regulation E, 12 C.F.R. §1005.3(b). A corresponding change would be made to the definition of "Electronic Funds Transfer" in the model contract located at §90.404(a)(9).

The proposal would repeal §90.501 through §90.604, which contain model clauses and contracts for second-lien purchase money loans and home improvement loans. The OCCC understands that regulated lenders do not commonly use these provisions for Chapter 342 loans.

Fiscal Impact

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.

Public Benefits and Costs

Christine Graham, Director of Consumer Protection, has determined that for each year of the first five years the proposed rule changes are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, and that licensees will experience fewer burdens in preparing loan contracts that comply with the rules, while also continuing to ensure that loan contracts are easily understood by consumers.

The OCCC does not anticipate economic costs to persons who are required to comply with the rule changes as proposed.

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.

Government Growth Impact

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 not expand an existing regulation. The proposal would limit current §90.104 by adjusting the maximum Flesch-Kincaid grade level for Chapter 342, Subchapter F loan contracts. The proposal would repeal current §§90.501 - 90.504, and §§90.601 - 90.604. 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.

Public Comments

In July 2026, the OCCC issued an advance notice of rule review, seeking informal feedback on the rule review. The OCCC received two informal comments on the advance notice: one from an association of consumer lenders and one from a regulated lender. Both informal comments support adjusting Flesch-Kincaid grade level requirements for non-standard loan contracts.

Notice of the review of 7 TAC Chapter 90 was published in the *Texas Register* on August 7, 2026 (51 TexReg 5255). The commission did not receive any official comments in response to the notice published in the *Texas Register*.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received one informal precomment on the rule text draft from an association of consumer lenders. The informal precomment supports the proposal to adjust the Subchapter F maximum Flesch-Kincaid grade level from 8 to 9.

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. The commission invites any comments with information related to the cost, benefit, or effect of the proposed rule changes, including any applicable data, research, or analysis, from any person required to comply with the proposed rule changes or any other interested person. 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.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §90.104

Statutory Authority and Affected Provisions

The rule changes are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts for regulated loans. In addition, Texas Finance Code, §11.304 authorizes the Finance 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 341.

§90.104. Non-Standard Contract Filing Procedures.

(a) - (b) (No change.)

(c) Contract filing requirements. Copies of the loan contract must be submitted in accordance with the OCCC's instructions and the following requirements:

(1) - (3) (No change.)

(4) Maximum Flesch-Kincaid score. The maximum Flesch-Kincaid Grade Level scores for Chapter 342 contract filings are:

~~[(A) grade 8 for Subchapter F (signature loans);]~~

(A) ~~[(B)]~~ grade 9 for Subchapter E (secured installment loans) and Subchapter F (signature loans);

~~(B) [(C)] grade 10 for Subchapter G, computed by scoring the note and security document in one continuous Microsoft Word document (home equity loans[; second lien purchase money loans; and second lien home improvement contracts]).~~

(d) (No change.)

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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SUBCHAPTER B. SECURED CONSUMER INSTALLMENT LOANS (SUBCHAPTER E)

7 TAC §90.203, §90.204

The rule changes are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts for regulated loans. In addition, Texas Finance Code, §11.304 authorizes the Finance 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 341.

§90.203. Model Clauses.

(a) (No change.)

(b) Model clauses for a Chapter 342, Subchapter E secured consumer installment loan contract.

(1) (No change.)

(2) Itemization of amount financed box. Two model clauses for the itemization of amount financed are presented in this paragraph. One is for use when the licensee finances an administrative fee. The other is for use when the administrative fee is paid in cash by the borrower. A licensee may delete portions applicable to any insurance premiums that are not financed and may also delete other inapplicable portions. The model clause options regarding the itemization of the amount financed read:

Figure: 7 TAC §90.203(b)(2)

~~[(A) For use when the administrative fee is financed:]~~

~~[Figure: 7 TAC §90.203(b)(2)(A)]~~

~~[(B) For use when the administrative fee is paid in cash:]~~

~~[Figure: 7 TAC §90.203(b)(2)(B)]~~

(3) - (28) (No change.)

§90.204. Model Contracts; Permissible Changes.

(a) A licensee may consider making the following types of changes to the secured consumer installment loans plain language model clauses:

(1) - (7) (No change.)

(8) A sample model contract using the true daily earnings method is presented in the following example.

Figure: 7 TAC §90.204(a)(8)

[Figure: 7 TAC §90.204(a)(8)]

(9) (No change.)

(b) (No change.)

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SUBCHAPTER D. SECOND LIEN HOME EQUITY LOANS (SUBCHAPTER G)

7 TAC §90.403, §90.404

The rule changes are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts for regulated loans. In addition, Texas Finance Code, §11.304 authorizes the Finance 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 341.

§90.403. *Model Clauses.*

(a) - (b) (No change.)

(c) Model clauses for the security document for a Chapter 342, Subchapter G second lien home equity loan contract.

(1) The model definitions section reads:

(A) - (K) (No change.)

(L) "Electronic Funds Transfer" has the meaning assigned to "electronic fund transfer" by the Electronic Fund Transfer Act (15 U.S.C. §1693a(7)) and Regulation E (12 C.F.R. §1005.3(b)), as amended. [means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.]

(M) - (R) (No change.)

(2) - (37) (No change.)

§90.404. *Model Contracts; Permissible Changes.*

(a) A licensee may consider making the following types of changes to the second lien home equity loans plain language model clauses:

(1) - (8) (No change.)

(9) A sample model security document is presented in the following example.

Figure: 7 TAC §90.404(a)(9)

[Figure: 7 TAC §90.404(a)(9)]

(b) (No change.)

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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SUBCHAPTER E. SECOND LIEN PURCHASE MONEY LOANS (SUBCHAPTER G)

7 TAC §§90.501 - 90.504

The rule changes are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts for regulated loans. In addition, Texas Finance Code, §11.304 authorizes the Finance 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 341.

§90.501. *Purpose.*

§90.502. *Contract Provisions.*

§90.503. *Model Clauses.*

§90.504. *Model Contracts; Permissible Changes.*

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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SUBCHAPTER F. SECOND LIEN HOME IMPROVEMENT CONTRACTS (SUBCHAPTER G)

7 TAC §§90.601 - 90.604

The rule changes are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts for regulated loans. In addition, Texas Finance Code, §11.304 authorizes the Finance 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 341.

§90.601. *Purpose.*

§90.602. *Contract Provisions.*

§90.603. *Model Clauses.*

§90.604. *Model Contracts; Permissible Changes.*

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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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING

SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §§15.24, 15.31, 15.33

The General Land Office (GLO) proposes amendments to 31 Texas Administrative Code (TAC) §15.24, relating to Certification Status of the City of Port Aransas Dune Protection and Beach Access Plan, §15.31 relating to Certification Status of the City of Corpus Christi Dune Protection and Beach Access Plan, and §15.33 relating to Certification Status of the Nueces County Dune Protection and Beach Access Plan.

The GLO is proposing new §§15.24(d), 15.31(f), and 15.33(m) to certify as consistent with state law amendments proposed by the City of Port Aransas, the City of Corpus Christi, and Nueces County to their local dune protection and beach access plans (Plans). The City of Port Aransas, City of Corpus Christi, and Nueces County have each requested approval to increase the beach user fee (BUF) to \$20.00 per calendar year.

Copies of the proposed Plan amendments can be obtained by contacting the GLO or the City of Port Aransas, City of Corpus Christi, and Nueces County.

BACKGROUND AND ANALYSIS OF THE PROPOSED AMENDMENTS

Pursuant to the Open Beaches Act, Texas Natural Resources Code (TNRC) Chapter 61; the Dune Protection Act, TNRC Chapter 63; TNRC § 33.607, and 31 TAC §§15.3, 15.7, and 15.17, a local government with jurisdiction over Gulf Coast beaches must submit any proposed amendments to its Plan to the GLO for certification. If appropriate, the GLO will certify the Plan as consistent with state law by amendment of a rule, as authorized in TNRC §§61.011(d)(5), 61.015(b), and 63.121. The certification by rule reflects the state's certification of the Plan; however, the text of the Plan is not adopted by the GLO, as provided in 31 TAC §15.3(o)(4).

On August 11, 2026, the City of Corpus Christi passed Ordinance No. 26-1118 to amend its Plan to increase their beach user fee from \$12.00 per calendar year to \$20.00 per calendar year. On August 12, 2026, the City of Port Aransas passed Resolution No. 2026-R34 to amend its dune protection and beach access plan to increase their beach user fee from \$12.00 per calendar year to \$20.00 per calendar year. On September 9, 2026, the Nueces County passed Commissions Court Order No. 20260526 09-09 to amend its dune protection and beach access plan to increase their beach user fee from \$12.00 per calendar year to \$20.00 per calendar year.

Free beach parking areas will continue to be provided in the City of Port Aransas from the jetties to Lantana Drive and from Beach Marker 52 to Beach Marker 58, in the City of Corpus Christi from Beach Access Road 2 to Mustang Island State Park and at the Windward parking lot behind the Michael J. Ellis Seawall, and in Nueces County at I.B. Magee Park and adjacent to Bob Hall Pier.

The City of Corpus Christi, City of Port Aransas, and Nueces County have each indicated that the proposed BUF increase is necessary due to the continuous rise of expenses for beach-related services, such as litter abatement and maintaining sanitary restrooms, and to support the cost of new amenities and public beach access improvements. The expenses for beach-related services in each jurisdiction have been exceeding the BUF revenues collected within the same timeframe. According to the City of Corpus Christi, collected BUF revenues in 2025 covered less than half of the City's eligible beach-related services. The cost of providing beach-related services in the City of Port Aransas, such as beach cleaning and maintenance, sanitation and trash collection, and lifeguard and safety operations, has exceeded annual BUF revenues by at least \$1 million annually for the past five years. Similarly, the total expenses for beach-related services in Nueces County over the past five years has exceeded the total revenues from BUF. The increased BUF will be used by each jurisdiction to support these ongoing beach-related services, while providing revenues to expand public facilities and services to beachgoers and to support beach nourishment long-term.

The City of Corpus Christi estimates receiving \$2.2 million in revenues each year from the increased BUF and spending at least \$3 million annually on expenses for beach-related services. According to the City of Corpus Christi, in the short term, the funds from the proposed BUF increase will be used to support expanded beach rescue operations, add new public

restrooms and a beach rescue facility on Zahn Road, maintain a new public beach access road, replace beach maintenance vehicles, and maintain the Michael J Ellis Seawall and associated beach amenities. These short-term projects are estimated to cost a total of over \$3 million. In the long term, the City of Corpus Christi has stated that the increase in BUF will be used for future beach nourishment projects and to add additional public restrooms and parking, which may include purchasing land. Future possible beach nourishment is still in the planning phases and could cost tens of millions depending on the source of the sand and the placement method, and the City estimates that purchasing land and constructing new public restrooms and parking may cost approximately \$2 million.

The City of Port Aransas has stated that the funds from the increased BUF will be used in the short term to extend beach rescue operations and lifeguard towers further south, maintain a newly constructed beach access road, and replace damaged beach operations equipment. In the long-term, the City of Port Aransas has stated that the increase in BUF will be used for future beach nourishment projects and to further expand the infrastructure and operations associated with beach rescue, which may include permanent facilities and additional lifeguard towers, equipment, and staff. With the increase in beach-related services and facilities to be provided to beachgoers by the City of Port Aransas, the City projects that the expenses for beach-related services will continue to surpass BUF revenues after the BUF increase. The City of Port Aransas estimates receiving \$3.3 million in annual BUF revenues and spending over \$4 million each year on beach-related services, which does not include costs associated with designing, planning, permitting, and constructing a beach nourishment project.

According to Nueces County, the funds from the increased BUF will be used in the short term to repair a damaged beach access parking area, rebuild a public dune walkover, and replace beach operations equipment. In the long term, the County plans to use the funds from the BUF increase to support beach nourishment activities and to rebuild public beach restrooms to meet current FEMA and accessibility requirements. The County anticipates receiving approximately \$991k in BUF revenues each year and spending \$950k annually on routine beach cleaning and maintenance and \$490k annually on short-term beach improvement projects and equipment replacement. The County has stated that their long-term goal of rebuilding four public beach restrooms will likely cost \$2 million per restroom (for a total of \$8 million), and nourishing the beach may cost over \$10 million.

Based on the information provided by the City of Corpus Christi, City of Port Aransas, and Nueces County, the GLO has determined that the BUF increase is reasonable because it does not exceed the necessary and actual cost of providing reasonable beach-related facilities and services, including enhanced amenities, does not unfairly limit public use of and access to and from public beaches in any manner, and is consistent with 31 TAC §15.8 and the Open Beaches Act.

FISCAL AND EMPLOYMENT IMPACTS

Angela Sunley, Deputy Director for the GLO's Coastal Resources Division, has determined that for each year of the first five years the amended rule as proposed is in effect, there will be minimal, if any, fiscal implications to the state government or local economy as a result of enforcing or administering the amended rules.

Ms. Sunley has determined that the proposed amendments will not affect the costs of compliance for businesses as the proposed changes relate to individual permits for parking on the beach and are not related to the permitting or restriction of business activities. The impact of the fee increase is mitigated by existing intermittently spaced no-fee areas throughout each jurisdiction.

The proposed rulemaking will have no adverse effects on local employment, and no impact statement is required pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Ms. Sunley has determined that the public will be affected by the increase of the BUF. Individuals will be required to pay larger annual fees. However, the Plan for each jurisdiction includes no-fee areas of public beach parking as required by 31 TAC §15.8(h), thereby mitigating the impact of the BUF increase on individuals. Free beach parking areas will continue to be provided in the City of Port Aransas from the jetties to Lantana Drive and from Beach Marker 52 to Beach Marker 58, in the City of Corpus Christi from Beach Access Road 2 to Mustang Island State Park and at the Windward parking lot behind the Michael J. Ellis Seawall, and in Nueces County at I.B. Magee Park and adjacent to Bob Hall Pier.

Ms. Sunley has determined that the BUF benefits the public and beachgoers because the increased fees are necessary for each jurisdiction to continue to fund and provide adequate and improved beach-related services to the public. The BUF specifically benefits the public and beachgoers by funding beach-related services such as public beach restrooms, expanded beach rescue operations, the maintenance of new beach access roads, and beach nourishment.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendments are proposed under TNRC §§33.602, 33.607, 61.011, 61.015(b), 61.022 (b) & (c), 63.091, and 63.121, which provide the GLO with the authority to adopt rules governing the preservation and enhancement of the public's right to use and access public beaches and to certify local government beach access and use plans as consistent with state law. The proposed amendments do not exceed federal or state requirements.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed amend-

ments do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §§17 and 19 of the Texas Constitution. The GLO has also determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to property or use of that property. GLO has therefore determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement for this proposed rulemaking. Since the proposed rules simply certify amendments to the local dune protection and beach access plans for the City of Corpus Christi, City of Port Aransas, and Nueces County, they will not affect the operations of the GLO. The proposed rulemaking does not create or eliminate a government program, will not require an increase or decrease in future legislative appropriations to the agency, will not require the creation of new employee positions nor eliminate current employee positions at the agency, nor will it require an increase or decrease in fees paid to the GLO. The proposed rule amendments do not create, limit, or repeal existing agency regulations, but rather certify the amendments to the local Plans as consistent with state law. The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability.

During the first five years that the proposed rules would be in effect, it is not anticipated that there will be an adverse impact on the state's economy.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed rulemaking is subject to the Coastal Management Program (CMP) as provided for in TNRC §§33.2053 and 31 TAC §§29.11(a)(1)(J) and 29.11(c) (relating to Actions and Rules Subject to the CMP). GLO has reviewed this proposed action for consistency with CMP goals and policies in accordance with the regulations and has determined that the proposed action is consistent with the applicable CMP goals and policies. The applicable goals and policies are found at 31 TAC §26.12 (relating to Goals) and §26.26 (relating to Policies for Construction in the Beach/Dune System). The proposed rules are consistent with CMP policies in 31 TAC §26.26(a)(4) because they enhance and preserve the ability of the public, individually and collectively, to exercise rights of use and access to and from public beaches.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposed rule amendment.

STATUTORY AUTHORITY

The amendments are proposed under TNRC §§33.602, 33.607, 61.011, 61.015(b), 61.022 (b) & (c), 63.091, and 63.121, which provide the GLO with the authority to adopt rules governing the preservation and enhancement of the public's right to access and use public beaches and certification of local government beach access and dune protection plans as consistent with state law.

TNRC §§33.602, 33.607, 61.011, 61.015(b), 61.022 (b) & (c), 63.091, and 63.121 are affected by the proposed amendments. The GLO hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

§15.24. Certification Status of City of Port Aransas Beach Dune Protection and Beach Access Plan.

(a) - (c) (No change.)

(d) The General Land Office certifies as consistent with state law the amendment to the City of Port Aransas plan that was adopted by City Council on August 12, 2026, by Resolution 2026-R34 to increase the beach user fee to \$20 per calendar year.

§15.31. Certification Status of City of Corpus Christi Dune Protection and Beach Access Plan.

(a) - (e) (No change.)

(f) The General Land Office certifies as consistent with state law the amendment to the City of Corpus Christi plan that was adopted by the City Council on August 11, 2026, by Ordinance No. 26-1118 to increase the beach user fee to \$20 per calendar year.

§15.33. Certification Status of Nueces County Dune Protection and Beach Access Plan.

(a) - (l) (No change.)

(m) The General Land Office certifies as consistent with state law the amendment to the Nueces County plan that was adopted by Commissioners Court on September 9, 2026 by Court Order No. 20260526 09-09 to increase the beach user fee to \$20 per calendar year.

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 October 13, 2026.

TRD-202604352

Jennifer Jones

Chief Clerk & Deputy Land Commissioner

General Land Office

Earliest possible date of adoption: November 29, 2026

For further information, please call: (512) 475-1859



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.342

The Comptroller of Public Accounts proposes amendments to §3.342, concerning information services. The amendment addresses a change in policy on information services and particularly with respect to electronic health records (EHR) and electronic medical records (EMR). Tax Code, §151.0038(a)(1)(B)

defines "information service" as electronic data retrieval or research. Systems used by doctors and hospitals to retrieve EHR and EMR fall within this definition. However, these systems are nontaxable information services under the amended section (a)(8).

The rule amends the definition of data processing services in subsection (a)(1) to exclude EHR and EMR systems as data processing. Subsection (a)(2), (3), and (4) provide definitions for EHR, EMR and healthcare provider. Subsection (a)(5), renumbered to (a)(8), establishes that EHR and EMR systems are nontaxable information services. Subsection (j) provides additional detail on nontaxable EHR and EMR systems.

This is a prospective policy change. Transactions prior to the effective date of this rule revision fall under the prior administration's policy and are subject to sales or use tax as then interpreted and enforced. No sales or use tax refunds will be processed for charges occurring before the effective date of this rule revision.

Dr. Tetyana Melnyk, Chief Revenue Estimator, has determined that during the first five years that the proposed amendments are in effect, the amended rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not have significant effect on this state's economy. This proposal amends an existing rule.

Dr. Melnyk also has determined that the proposed amendments would benefit the public by reducing costs and uncertainty for businesses. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amendments would result in losses to General Revenue Fund 0001 of \$18,248,000 in fiscal year 2027, \$19,213,000 in fiscal year 2028, \$20,205,000 in fiscal year 2029, \$21,159,000 in fiscal year 2030, \$22,166,000 in fiscal year 2031, and \$23,224,000 in fiscal year 2032. Losses to units of local governments, including municipalities, counties, and transit authorities, would be \$5,270,000 in fiscal year 2027, \$5,560,000 in fiscal year 2028, \$5,840,000 in fiscal year 2029, \$6,100,000 in fiscal year 2030, \$6,400,000 in fiscal year 2031, and \$6,710,000 in fiscal year 2032.

You may submit comments on the proposal or information related to the cost, benefit, or effect of the proposal, including any applicable data, research or analysis, to Robin Robinson, Associate Deputy Comptroller for Tax, P.O. Box 13528, Austin, Texas 78711 or to the email address: Robin.Robinson@cpa.texas.gov. The comptroller must receive your comments or other information no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

The amendments implement Tax Code, §151.0101 (Taxable Services).

§3.342. *Information Services.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Data processing services--Processing, reformatting, or manipulating data provided by the customer is data processing and is not included in the definition of information services. The term does not include an electronic health record (EHR) system or an electronic medical record (EMR) system provided to a healthcare provider.

(2) Electronic health record (EHR) system--A system maintained by or for a healthcare provider that is designed or used primarily to maintain an individual's medical or health record and to make the record available to, or exchangeable among, more than one healthcare provider.

(3) Electronic medical record (EMR) system--A system maintained by or for a healthcare provider that is designed or used primarily to create, gather, manage, or consult an individual's medical or health record within a single healthcare provider.

(4) Healthcare provider--An individual provider or hospital that diagnoses or treats patients.

(A) Individual Provider--An individual licensed in this state to practice as a physician (doctor of medicine or doctor of osteopathy), podiatrist, dentist, orthodontist, advanced practice registered nurse, physician assistant (PA-C), chiropractor, psychologist, licensed professional counselor, veterinarian, optometrist, registered nurse, physical therapist, occupational therapist, speech-language pathologist, or audiologist, including a professional entity through which individual providers practice.

(B) Hospital--A facility licensed as a hospital under the laws of this state or operated as a hospital by a governmental entity.

(5) [(2)] Information services--Furnishing general or specialized news or other current information, including financial information, by printed, mimeographed, electronic, or electrical transmission, or by utilizing wires, cable, radio waves, microwaves, satellites, fiber optics, or any other method now in existence or which may be devised, and electronic data retrieval or research. The term information services does not include Internet access service or information services that are provided in conjunction with and merely incidental to the provision of Internet access service when provided for a single charge.

(6) [(3)] Internet--Collectively [collectively] the myriad of computer and telecommunications facilities, including equipment and operating software, that comprise the interconnected worldwide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to the protocol, to communicate information of all kinds by wire or radio.

(7) [(4)] Internet access service--A [a] service that enables users to access content, information, electronic mail, or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. Internet access service does not include any other taxable service, unless the taxable service is provided in conjunction with and is merely incidental to the provision of Internet access service. Individuals providing Internet access should refer to §3.366 of this title (relating to Internet Access Services).

(8) [(5)] Nontaxable information services.

(A) The sale of information that is gathered or compiled on behalf of a particular client is not subject to tax if the information is of a proprietary nature to that client and may not be sold to others by the person who gathered or compiled the information. Any subsequent sale of such information by the client for whom the information

was gathered or compiled is subject to tax. Examples include opinion polls, information maintained for a healthcare provider, and management consultant reports.

(B) Any sale of information primarily derived from laboratory, medical, or exploratory testing or experimentation or any similar method of direct scientific observation of physical phenomena is not subject to tax. Examples include, but are not limited to, geophysical survey information, polygraph test, and medical test results.

(C) Information required to be furnished pursuant to the Open Records Act is not subject to sales tax. See §3.341 of this title (relating to Sales of Governmental Publications, Records, or Documents). Fees paid when obtaining these documents may be excluded from the tax base if separately stated when the documents are furnished to clients. Tax will only be due on the amount over and above the cost of the documents.

(9) [(6)] Taxable information services. Information that is gathered, maintained, or compiled and made available by the provider of the information service to the public or to a specific segment of industry for a consideration is subject to sales tax. Examples of taxable information services include, but are not limited to, the following:

(A) newsletters;

(B) scouting reports and surveys, including those used in sports and the oil and gas and related industries;

(C) mailing lists, and bad check lists (only that percentage which represents names of persons located in Texas is taxable);

(D) real estate listings;

(E) financial, investment, stock market, or bond rating, or financial reports, other than charges to a person by a financial institution for account balance information;

(F) news clipping services and wire services; and

(G) abstracts of title and other information provided by title plants.

(b) Hold permits. All providers of information services must obtain Texas sales and use tax permits and collect tax on charges for information services, or accept properly completed resale, exemption, or direct payment permit certificates in lieu of collecting tax. See §3.285 of this title (relating to Resale Certificate; Sales for Resale); §3.287 of this title (relating to Exemption Certificates); §3.288 of this title (relating to Direct Payment Procedures and Qualifications). Effective October 1, 1999, 20% of the total amount charged for information services is exempted from sales and use tax. The exemption applies to services performed on or after October 1, 1999. The exemption does not apply to services performed before the effective date and billed or paid for after the effective date of the exemption.

(c) Exempt information services. Sales tax is not due on information services sold to a newspaper or to a radio or television station licensed by the Federal Communications Commission, if an exemption certificate is obtained. The exemption certificate must state that the purchaser is a newspaper with a general circulation published at least as frequently as weekly, or is a station licensed by the Federal Communications Commission.

(d) Resale certificates.

(1) Providers of information service may issue a resale certificate in lieu of tax to suppliers of tangible personal property only if care, custody, and control of the property will be transferred to the service provider's client. For example, an information provider purchases magnetic tape to transfer information to customers. The tape is trans-

ferred to the customer, and the customer owns and uses the tape to review the information. The information provider may purchase the tape tax free by issuing a resale certificate. Tax is due on the total amount charged the customer, including amounts for the tape and for the services.

(2) A resale certificate may be issued for a service if the buyer intends to transfer the service as an integral part of taxable services. A service will be considered an integral part of a taxable service if the service purchased is essential to the performance of the taxable service and without which the taxable service could not be rendered.

(3) A resale certificate may be issued for a taxable service if the buyer intends to incorporate the service into tangible personal property which will be resold. If the entire service is not incorporated into the tangible personal property, it will be presumed the service is subject to tax and the service will only be exempt to the extent the buyer can establish the portion of the service actually incorporated into the tangible personal property. If the buyer does not intend to incorporate the entire service into the tangible personal property, no resale certificate may be issued, but credit may be claimed at the time of sale of the tangible personal property to the extent the service was actually incorporated into the tangible personal property.

(e) Unrelated services.

(1) A service will be considered as unrelated if:

(A) it is not an information service nor a service taxed under other provisions of the Tax Code, Chapter 151;

(B) it is of a type which is commonly provided on a stand-alone basis; and

(C) the performance of the unrelated service is distinct and identifiable. Examples of an unrelated service which may be excluded from the tax base include consultation, training, expedited filing charges, escrow fees, or charges for proprietary information.

(2) Where nontaxable unrelated services and taxable services are sold or purchased for a single charge and the portion relating to taxable services represents more than 5.0% of the total charge, the total charge is presumed to be taxable. The presumption may be overcome by the information provider at the time the transaction occurs by separately stating to the customer a reasonable charge for the taxable services. However, if the charge for the taxable portion of the services is not separately stated at the time of the transaction, the service provider or the purchaser may later establish for the comptroller, through documentary evidence, the percentage of the total charge that relates to nontaxable unrelated services. The information provider's books must support the apportionment between exempt and nonexempt activities based on the cost of providing the service or on a comparison to the normal charge for each service if provided alone. If the charge for exempt services is unreasonable when the overall transaction is reviewed considering the cost of providing the service or a comparable charge made in the industry for each service, the comptroller will adjust the charges and assess additional tax, penalty, and interest on the taxable services.

(3) Charges for services or expenses directly related to and incurred while providing the taxable service are taxable and may not be separated for the purpose of excluding these charges from the tax base. Examples would be charges for meals, telephone calls, hotel rooms, or airplane tickets.

(f) Service benefit location. If both the information service provider and the customer are located in Texas, Texas tax is due.

(g) Service benefit location - multistate customer.

(1) To the extent information service is used to support a separate, identifiable segment of a customer's business (other than general administration or operation of the business) the service is presumed to be used at the location where that part of the business is conducted.

(2) If that part of the business is conducted at locations both within and outside the state, the service is not taxable to the extent it is used outside Texas. A multistate customer may use any reasonable method for allocation which is supported by business records.

(3) A multistate customer purchasing information services for the benefit of both in-state and out-of-state locations is responsible for issuing to the information service provider an exemption certificate asserting a multistate benefit, and for reporting and paying the tax on that portion of the charge for information which will benefit the Texas location. An information provider that accepts such a certificate in good faith is relieved of responsibility for collecting and remitting tax on transactions to which the certificate relates.

(4) The customer's books must support the assignment of the service to an identifiable segment of the business, the determination of the location or locations of the use of the service, and the allocation of the taxable charge to Texas.

(5) To the extent the use of the service cannot be assigned to an identifiable segment of a customer's business, the service is presumed to be used to support the administration or operation of the customer's business generally. The service is presumed to be used at the customer's principal place of business. The principal place of business means the place from which the trade or business is directed or managed.

(h) Local taxes.

(1) For local sales tax purposes, city, county, transit authority, and special purpose district sales taxes are due if an information provider has only one place of business (the location where clients request service) within the boundaries of a local taxing entity. Local sales tax must be collected based on the tax rate at that location, except that no MTA or CTD sales tax is due on services provided at a location outside the boundaries of the transit area. In the case of multiple locations, if an order for service is placed at one location but the service is provided at another location, the place of business from which the service is provided will determine to which local taxing entity the tax is allocated.

(2) If a place of business is outside the boundaries of a local taxing entity, the information provider will be required to collect local use tax if the client is within the local taxing entity and the information provider has representation in the local taxing entity as outlined in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities). Even if the information provider is not required to collect local use tax, the client is still liable for the tax if the service is performed or a benefit is derived from the service within the boundaries of a local taxing entity.

(A) An in-state customer purchasing information services for the benefit of locations in more than one local taxing entity is responsible for issuing to the information provider an exemption certificate asserting a multi-city benefit and for determining the extent of benefit for each entity. The local tax for each entity must be reported, allocated, and paid by the customer. An information provider that accepts in good faith an exemption certificate claiming a multi-city benefit is relieved of responsibility for collecting and remitting local tax on transactions to which the certificate relates.

(B) A multistate customer purchasing information services for the benefit of both in-state and out-of-state locations is responsible for issuing an exemption certificate and for reporting and paying

local tax as provided by subsection (g)(3) ~~[(f)(3)]~~ and (4) of this section.

(i) Use tax. If an information provider is not doing business in Texas or in specific local taxing jurisdictions and is not required to collect Texas state or local tax, it is the Texas customer's responsibility to report the state and local use tax directly to this office.

(j) Electronic health record and electronic medical record systems.

(1) A charge to a healthcare provider for an EHR or EMR system is a nontaxable information service under subsection (a)(8)(A) of this section to the extent the information maintained in the system is proprietary to the healthcare provider and may not be sold to others by the person providing the system.

(2) A charge to a healthcare provider for an EHR or EMR system is not subject to sales or use tax as a data processing service.

(3) A healthcare provider's disclosure of information maintained in an EHR or EMR system to the patient, to another healthcare provider, or to a payor for purposes of treatment, payment, or healthcare operations, or at the patient's request, is not a subsequent sale of the information under subsection (a)(8)(A) of this section.

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 October 19, 2026.

TRD-202604429

Chris Blackwell

General Counsel and Associate Deputy Comptroller

Comptroller of Public Accounts

Earliest possible date of adoption: November 29, 2026

For further information, please call: (512) 475-2220



PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 73. BENEFITS

34 TAC §73.31, §73.39

The Employees Retirement System of Texas (ERS) proposes the repeal to 34 Texas Administrative Code (TAC) Chapter 73, Benefits, by repealing §73.31 (Adjustments to Annuities) and §73.39 (One-Time Increase to Certain Annuitants).

ERS was created by the Texas Constitution and administers a constitutional trust fund, as currently set forth in Tex. Const. art. XVI, §67. ERS is further organized pursuant to Title 8, Tex. Gov't Code, as well as 34 Texas Administration Code, §§61.1 *et seq.*

The repeals are proposed to §73.31 (Adjustments to Annuities) concerning a statutory adjustment to ERS annuities in 2001; and to §73.39 (One-Time Increase to Certain Annuitants) concerning a statutory adjustment to ERS annuities in 1995. Adoption of the proposed repeals will not change any benefit administered by ERS but rather will serve to streamline the administrative framework surrounding ERS benefits by eliminating provisions that are no longer needed.

GOVERNMENT GROWTH IMPACT STATEMENT

ERS has determined that during the first five-year period the repeals will be in effect:

- (1) the proposed repeals will not create or eliminate a government program;
- (2) implementation of the proposed repeals will not require the creation of new employee positions or eliminate existing employee positions;
- (3) implementation of the proposed repeals will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed repeals will not require an increase or decrease in fees paid to the agency;
- (5) the proposed repeals will not create a new regulation;
- (6) the proposed repeals will not expand an existing rule or regulation;
- (7) the proposed repeals will not increase or decrease the number of individuals subject to the rules' applicability; and
- (8) the proposed repeals will not adversely affect the state's economy.

Mrs. Anne Allensworth, Enterprise Efficiency Director, has determined that for the first five-year period the repeals are in effect, there will be no fiscal implication for state or local government or local economies as a result of enforcing or administering the amended rules; and small businesses, micro-businesses, and rural communities will not be affected.

The proposed repeals do not constitute a taking. Mrs. Allensworth has also determined that, to her knowledge, there are no known anticipated economic effects for persons who are required to comply with the repeals as proposed, and the proposed repeals do not impose a cost on regulated persons.

Mrs. Allensworth also determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of adopting the repeals would be that rules supporting ERS benefit administration would be more streamlined and easier for the impacted population to understand.

Comments on the proposed repeals may be submitted to Cynthia C. Hamilton, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Hamilton at General.Counsel@ers.texas.gov. The deadline for receiving comments is Monday, November 30, 2026 at 10:00 a.m.

The repeals are proposed under Tex. Gov't Code §815.102, which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of any other business of the Board. This explicit authority includes implied authority to amend and repeal such rules.

No other statutes are affected by the proposed repeals.

§73.31. *Adjustment to Annuities.*

§73.39. *One-Time Increase to Certain Annuitants.*

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 October 19, 2026.

TRD-202604433

Cynthia C. Hamilton

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Earliest possible date of adoption: November 29, 2026

For further information, please call: (877) 275-4377



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 9. PUBLIC SAFETY COMMUNICATIONS

SUBCHAPTER J. TEXAS POWER OUTAGE ALERT SYSTEM

37 TAC §§9.111 - 9.114

The Texas Department of Public Safety (the department) proposes new rules at 37 Texas Administrative Code (TAC), Chapter 9, in new Subchapter J, §§9.111 - 9.114, concerning Texas Power Outage Alert System.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 37 TAC, Chapter 9, Subchapter J, implement Texas Government Code, Chapter 411, Department of Public Safety of the State of Texas. The proposed rules specify the procedures to be used to issue a power outage alert to notify the public when the system-wide power supply in one or more power regions within Texas may be inadequate to meet demand. The proposed rules are necessary to implement Senate Bill 3, 87th Legislature, Regular Session (2021).

SECTION-BY-SECTION SUMMARY

The proposed rules add new §9.111, Purpose of Power Outage Alert, which outlines the purpose of the Power Outage Alert System.

The proposed rules add new §9.112, Requesting Agency Responsibility, which outlines the requesting agency's responsibilities when submitting a request to activate the Power Outage Alert System.

The proposed rules add new §9.113, Department Responsibility, which outlines the department's responsibilities when an agency submits a request to activate the Power Outage Alert System.

The proposed rules add new §9.114, Activation and Deactivation, which details how the Power Outage Alert System will be activated and deactivated.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Sabrina Dunne, Texas Alert Program Manager, Homeland Security Division, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules. Ms. Dunne has determined that for each year of the first five years

the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Ms. Dunne has determined that the proposed rules will not affect a local economy, the department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

PUBLIC BENEFITS

Ms. Dunne has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be improved public health and safety by notifying the public when the power supply in Texas may be inadequate to meet demand.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Ms. Dunne has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the department has determined that the proposed rules will have no adverse economic effects on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code, §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the department is not required to take any further action under Texas Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code, §2001.0221, the department provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the department has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules create a new regulation.
6. The proposed rules do not expand, limit, or repeal an existing regulation.

7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Texas Government Code, §2007.043.

PUBLIC COMMENTS AND INFORMATION RELATED TO THE COST, BENEFIT, OR EFFECT OF THE PROPOSED RULES

The department is requesting public comments on the proposed rules and information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis. Any information that is submitted in response to this request must include an explanation of how and why the submitted information is specific to the proposed rules. Please do not submit copyrighted, confidential, or proprietary information. Comments on the proposed rules and responses to the request for information may be submitted to: Sabrina Dunne, Texas Alert Program Manager, 6100 Guadalupe Street, Bldg. E, Austin, Texas 78752, or by email to Sabrina.Dunne@dps.texas.gov. Email submission only is preferred. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Government Code, §411.302, which requires the director to adopt rules and issue directives as necessary to ensure proper implementation of the power outage alert. The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is Senate Bill 3, 87th Legislature, Regular Session (2021).

The statutory provisions affected by the proposed rules are those set forth in Texas Government Code, §§411.301- 411.308.

§9.111. Purpose of Power Outage Alert.

The Power Outage Alert System is a statewide emergency alert system used to notify the public when the power supply in Texas may be inadequate to meet demand. A Power Outage Alert may be activated regionally or statewide, depending on the affected area. The Public Utility Commission of Texas has adopted criteria for the content, activation, and termination of a Power Outage Alert, which is outlined in 16 TAC §25.57 (relating to Power Outage Alert Criteria). Upon identifying a power supply concern and confirming the criteria for a Power Outage Alert has been met, the Public Utility Commission of Texas (or an independent organization certified under Texas Utilities Code, §39.151) may request the department activate a Power Outage Alert to share public safety information with individuals in the affected area(s).

§9.112. Requesting Agency Responsibility.

Upon determining the criteria outlined in 16 TAC §25.57 (relating to Power Outage Alert Criteria) has been met, the Public Utility Commission of Texas (or an independent organization certified under Utilities Code, §39.151) may request statewide or regional activation of the Power Outage Alert System by submitting the department's power outage alert request form, available on the department's website. The agency requesting the Power Outage Alert must provide information

and messaging to be included in the content of the alert, as outlined by 16 TAC §25.57(f).

§9.113. Department Responsibility.

The department must review a request for activation to confirm the request meets the criteria for activation and activate the system if the requesting agency has established that statutory criteria has been satisfied. The power outage alert must include a statement that electricity customers may experience a power outage.

§9.114. Activation and Deactivation.

The Power Outage Alert System activation and deactivation must be made according to the procedures specified in the current Power Outage Alert standard operating guidelines, as well as the criteria adopted by the Public Utility Commission of Texas outlined in 16 TAC §25.57 (relating to Power Outage Alert Criteria).

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 October 15, 2026.

TRD-202604376

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: November 29, 2026

For further information, please call: (512) 424-5848



SUBCHAPTER K. TEXAS ACTIVE SHOOTER ALERT SYSTEM

37 TAC §§9.121 - 9.124

The Texas Department of Public Safety (the department) proposes new rules at 37 Texas Administrative Code (TAC), Chapter 9, in new Subchapter K, §§9.121 - 9.124, concerning Texas Active Shooter Alert System.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 37 TAC, Chapter 9, Subchapter K, implement Texas Government Code, Chapter 411, Department of Public Safety of the State of Texas. The proposed rules specify the procedures to be used to issue an active shooter alert to notify the public in proximity to an active shooter situation. The proposed rules are necessary to implement House Bill 103, 87th Legislature, Regular Session (2021).

SECTION-BY-SECTION SUMMARY

The proposed rules add new §9.121, Purpose of Active Shooter Alert, which outlines the purpose of the Active Shooter Alert.

The proposed rules add new §9.122, Local Law Enforcement Responsibility, which outlines the local law enforcement's responsibilities when submitting a request to activate the Active Shooter Alert.

The proposed rules add new §9.123, Department Responsibility, which outlines the department's responsibilities when local law enforcement submits a request to activate the Active Shooter Alert.

The proposed rules add new §9.124, Deactivation, which details how the Active Shooter Alert will be deactivated.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Sabrina Dunne, Texas Alert Program Manager, Homeland Security Division, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules. Ms. Dunne has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Ms. Dunne has determined that the proposed rules will not affect a local economy, the department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

PUBLIC BENEFITS

Ms. Dunne has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be improved public safety by rapidly notifying the public of an active shooter incident in the area and providing critical public safety and emergency information.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Ms. Dunne has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the department has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code, §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the department is not required to take any further action under Texas Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code, §2001.0221, the department provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the department has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules create a new regulation.
6. The proposed rules do not expand, limit, or repeal an existing regulation.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Texas Government Code, §2007.043.

PUBLIC COMMENTS AND INFORMATION RELATED TO THE COST, BENEFIT, OR EFFECT OF THE PROPOSED RULES

The department is requesting public comments on the proposed rules and information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis. Any information that is submitted in response to this request must include an explanation of how and why the submitted information is specific to the proposed rules. Please do not submit copyrighted, confidential, or proprietary information. Comments on the proposed rules and responses to the request for information may be submitted to Sabrina Dunne, Texas Alert Program Manager, 6100 Guadalupe Street, Building E, Austin, Texas 78752, or by email to Sabrina.Dunne@dps.texas.gov. Email submission only is preferred. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Government Code, §411.373, which requires the director to adopt rules and issue directives as necessary to ensure proper implementation of the alert system. The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 103, 87th Legislature, Regular Session (2021).

The statutory provisions affected by the proposed rules are those set forth in Texas Government Code, §§411.371 - 411.380.

§9.121. Purpose of Active Shooter Alert.

The Texas Active Shooter Alert System was developed as an emergency response system to notify the public of active shooter situations in affected areas.

§9.122. Local Law Enforcement Responsibility.

(a) A local law enforcement agency with jurisdiction over the incident or as the department determines appropriate to assist a local law enforcement agency may immediately contact the department to request activation of the Active Shooter Alert System when its preliminary investigation clearly establishes that all statutory criteria have been satisfied.

(b) The alert system activation criteria have been satisfied when the local law enforcement agency:

- (1) believes an active shooter is in the agency's jurisdiction;
- (2) determines an alert would assist individuals near the active shooter's location;
- (3) verifies the active shooter situation through a preliminary investigation; and
- (4) provides the active shooter's last known location and any identifiable information for the active shooter.

(c) The local law enforcement agency must contact the department and submit the appropriate department form, available on the department's website, to request activation.

(d) The local law enforcement agency may provide specific language for the alert message to the public where feasible.

§9.123. Department Responsibility.

The department must activate the system when it confirms a preliminary investigation by the local law enforcement agency has occurred or as the department determines appropriate to assist a local law enforcement agency regarding an active shooter and has clearly established that all statutory criteria have been satisfied. Alert system activations will be made according to the procedures specified in the current Active Shooter Alert System standard operating guidelines.

§9.124. Deactivation.

(a) The department must terminate any Active Shooter Alert System activation if:

- (1) the active shooter situation is resolved; or
- (2) the department or a local law enforcement agency determines the alert system is no longer an effective tool for providing relevant information to the public about the active shooter.

(b) Alert system deactivations will be made according to the procedures specified in the current Active Shooter Alert System standard operating guidelines.

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 October 15, 2026.

TRD-202604377

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: November 29, 2026

For further information, please call: (512) 424-5848



CHAPTER 19. BREATH ALCOHOL TESTING REGULATIONS

SUBCHAPTER A. BREATH ALCOHOL TESTING REGULATIONS

37 TAC §§19.4 - 19.6

The Texas Department of Public Safety (the department) proposes amendments to existing rules at 37 Texas Administrative

Code (TAC), Chapter 19, Subchapter A, §§19.4 - 19.6, concerning Breath Alcohol Testing Regulations.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 37 TAC, Chapter 19, Subchapter A, implement Texas Government Code, Chapter 411, Department of Public Safety of the State of Texas, and Texas Transportation Code, Chapter 724, Implied Consent. The proposed rules clarify applicant responsibility to disclose certain information, specify that a technical supervisor certification may be inactivated for cause, specify that a course provider must ensure student eligibility, specify that a course provider must request approval for changes to approved curriculum, and make other grammatical and organizational updates.

SECTION-BY-SECTION SUMMARY

The proposed rule amends §19.4, Operator Certification. The proposed rule clarifies an applicant's responsibility to provide certain information to a course instructor and replaces outdated department organization references with the director's designee.

The proposed rule amends §19.5, Technical Supervisor Certification. The proposed rule makes grammatical changes to improve readability; specifies that a technical supervisor certification may be inactivated by the scientific director for cause; replaces outdated department organization references with the director's designee; and corrects a numbering error.

The proposed rule amends §19.6, Approval of Courses of Instruction. The proposed rule updates human subject terminology; specifies that the course provider must ensure student eligibility prior to start of the course; and specifies that a course provider must request approval from the scientific director before making any changes to an approved curriculum.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Alice Amilhat, Assistant Chief, Crime Laboratory Division, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules. Ms. Amilhat has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Ms. Amilhat has determined that the proposed rules will not affect a local economy, the department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

PUBLIC BENEFITS

Ms. Amilhat has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be clarification of current breath alcohol testing requirements and practices.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Ms. Amilhat has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the department has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code, §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the department is not required to take any further action under Texas Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code, §2001.0221, the department provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the department has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do not create a new regulation.
6. The proposed rules expand, limit, or repeal an existing regulation.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Texas Government Code, §2007.043.

PUBLIC COMMENTS AND INFORMATION RELATED TO THE COST, BENEFIT, OR EFFECT OF THE PROPOSED RULES

The department is requesting public comments on the proposed rules and information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis. Any information that is submitted in response to this request must include an explanation of how and why the submitted information is specific to the proposed rules. Please

do not submit copyrighted, confidential, or proprietary information. Comments on the proposed rules and responses to the request for information may be submitted to Frances Navejas, Crime Laboratory Division, Texas Department of Public Safety, 5800 Guadalupe Street, Austin, Texas 78752, or by email to Frances.Navejas@dps.texas.gov. Email submission only is preferred. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work. The proposed rules are also proposed under Texas Transportation Code, §724.003, which requires the department to adopt rules to administer the chapter, and §724.016, which authorizes the department to adopt rules related to the taking of a breath specimen, including specifying the qualifications of an individual to perform a breath specimen analysis and the analytical methods.

The statutory provisions affected by the proposed rules are those set forth in Texas Government Code, §411.004(3), and Texas Transportation Code, §724.003 and §724.016.

§19.4. Operator Certification.

(a) Certification.

(1) Prior to certification an applicant must establish an ~~[proof of]~~ association, or pending association with: a law enforcement agency, or a laboratory, actively engaged in evidential breath alcohol testing, or a certified school of instruction in Texas, or a ~~[proof of]~~ pending association upon receipt of certification.

(2) Conviction history:

(A) persons convicted of a felony or a Class A misdemeanor shall not be eligible to be a certified operator;

(B) persons convicted of a Class B misdemeanor within the last 10 years shall not be eligible to be a certified operator;

(C) persons receiving a driver license suspension or a denial to issue a driver license for refusal to submit to the taking of a specimen per the provisions of Texas Transportation Code, Chapter 724 or Chapter 522 within the last 5 years shall not be eligible to be a certified operator.

(3) Prior to initial certification as a breath test operator, an applicant must successfully complete a course of instruction meeting the criteria set forth in §19.6 of this title (relating to Approval of Courses of Instruction). An applicant must inform the course instructor if the applicant does not meet the requirements for certification under subsections (a)(1) or (2) of this section. An applicant must notify the course instructor if the applicant was previously certified or denied certification as a breath test operator in Texas. Failure to disclose this information may result in certification inactivation or suspension.

(4) Prior to certification as an operator of a breath alcohol testing instrument, an applicant must satisfactorily meet the criteria, set forth by the scientific director or a designated representative, as detailed in this paragraph:

(A) a written examination;

(B) establish competency in the operation of the instrument on which the operator is to be certified and the proper completion of all required reports and records;

(C) failure of the written examination and/or failure to establish competency in the operation of the instrument will cause the applicant to be ineligible for reexamination for a period of 30 days. A subsequent failure of either criteria will require that the candidate attend and satisfactorily complete the initial course of instruction for certification of a breath test operator.

(5) Upon successful completion of the requirements for certification, the scientific director will issue the individual an operator certificate for a period of time designated by the scientific director or until the next examination for renewal unless inactivated or suspended.

(6) If an operator is certified to operate a specific brand and/or model of equipment and is required to be certified on an additional brand and/or model of equipment, the scientific director may waive portions of this section and only require instruction needed to acquaint the applicant with proper operation of the new brand and/or model of equipment.

(b) Renewal of current certification. In order to maintain current certification, the operator is required to renew certification prior to its expiration date. The minimum requirement for renewal of operator certification will be:

(1) The proper completion of any combination of five subject and/or practice tests as defined in the Texas Breath Alcohol Testing Program Operator Manual since the last issuance of an operator certificate per the provisions of subsection (a)(5) or (b)(5) of this section.

(2) The satisfactory biennial completion of a course of instruction, the contents of which should include, but not be limited to, topics such as:

(A) a brief review of the theory and operation of the breath alcohol test equipment;

(B) a detailed review of the breath alcohol analysis and reporting procedures;

(C) a review of procedural updates resulting from recent court decisions and legislation;

(D) a review of current issues in the field of breath alcohol testing;

(E) a written examination

(3) Renewal of certification will be denied and current certification will be inactivated in accordance with subsection (d) of this section when the operator:

(A) fails to properly complete a minimum of five tests in accordance with subsection (b)(1) of this section; or

(B) fails the written examination.

(4) An operator who fails renewal will be given the reason for failure and is not eligible to be reexamined for a period of 30 days. Reexamination will be pursuant to subsection (a)(4) of this section. A resulting failure will require that the operator attend and satisfactorily complete the initial course of instruction for certification of a breath test operator in order to regain current certification.

(5) Upon successful completion of the requirements for renewal of certification, the scientific director will issue the individual an operator certificate for a period of time designated by the scientific director or until next examination for renewal unless inactivated or suspended.

(c) Proficiency requirements.

(1) The scientific director, or a designated representative, or the operator's technical supervisor may at any time require an opera-

tor to demonstrate proficiency in the proper operation of the instrument and analysis reporting procedures.

(2) It is the responsibility of the operator to maintain proficiency.

(3) Failure to pass a proficiency test will result in the suspension of the operator's certification for 30 days.

(d) Certification inactivation and suspension.

(1) Inactivation may be initiated by the certified operator in case of voluntary surrender of certification or by anyone with the authority to suspend. The technical supervisor or operator shall, without delay, notify the office of the scientific director of any such inactivation. Challenges to involuntary inactivation will be resolved at the discretion of the scientific director. Inactivation will be utilized, but is not limited to, as provided in this paragraph:

(A) an operator transfers to a position where certification as a breath test operator is no longer desired;

(B) an operator fails to renew certification prior to its expiration;

(C) an operator terminates employment under which certification was acquired; or

(D) administrative program control to safeguard the scientific integrity of the breath alcohol testing program.

(2) Suspension of certification will be utilized when the scientific director and/or a technical supervisor determines an operator intentionally or purposefully disregards or violates these regulations, or commits a violation of law relating to breath testing, or falsely or deceitfully obtains certification, or for malfeasance or noncompliance with any provision of these regulations, or when in the technical supervisor's judgment the operator's performance is unreliable or the operator is incompetent.

(A) The technical supervisor shall, without delay, notify the scientific director in writing of any such suspension and furnish a copy of such notice to the suspended operator and the operator's appropriate supervisor or department head. The suspended operator shall not be permitted to operate the instrument until such time as certification has been restored pursuant to subsection (e) of this section.

(B) Upon receipt of the notification of suspension, the scientific director shall initiate, if not previously completed, an inquiry culminating in sustaining the suspension or setting aside the suspension.

(C) The minimum period of suspension as determined by the scientific director will be for a period of time not less than 30 days. The technical supervisor or a designated representative of the scientific director may recommend a specific period of suspension to the scientific director.

(D) Due to the immediate nature and the procedure for appeal, the individual initiating the suspension shall not be required to confer, consult, or obtain permission or approval from anyone prior to the initiation of the suspension. However, all suspensions must be consistent with procedures outlined in this subchapter.

(3) An operator whose certification has been suspended may appeal such action in writing to the director's designee [assistant director of the major division responsible for crime laboratory activities, Texas Department of Public Safety], who will determine if the action of the scientific director will be affirmed or set aside. The director's designee [assistant director] may reinstate the certification

under such conditions as deemed necessary and notify the scientific director in writing.

(e) Recertification. Certification that has been inactivated or suspended must be regained before evidential analyses may be administered. Recertification shall take place as detailed in this subsection:

(1) recertification after inactivation for the failure to complete the renewal process prior to the expiration of current certification will be pursuant to subsection (a)(4) of this section;

(2) recertification after inactivation or suspension will be pursuant to subsection (a)(4) of this section;

(3) recertification after a change in instrumentation or testing methodologies will be at the discretion of the scientific director, will be pursuant to subsection (a)(6) of this section.

(f) Certificate. The issuance of a certificate to the breath test operator shall be evidence that the operator has met the requirements for initial certification and/or renewal of certification.

(g) Verification. The technical supervisor, when required, shall verify all aspects of operator certification, by direct testimony or by affidavit.

§19.5. Technical Supervisor of Certification.

(a) The primary function of the technical supervisor is to provide the technical, administrative and supervisory expertise in safeguarding the scientific integrity of the breath alcohol testing program and to ensure the breath alcohol testing program's acceptability for evidential purposes. The technical supervisor, in matters pertaining to breath alcohol testing, is the field agent of the scientific director. Supervision by the technical supervisor in accordance with the provisions stated in these regulations shall include, but not be limited to:

(1) supervision of certified operators in performance of breath alcohol test operations, including the proper completion of forms and records, and operator's compliance with the provisions stated in these regulations;

(2) supervision of certified instrumentation and affiliated equipment;

(3) supervision of data gathered for initial certification and/or approval of individual instruments;

(4) supervision of techniques and methods, maintaining scientific integrity and upholding these regulations;

(5) selection and supervision of a site location as it applies to security and technical suitability for testing;

(6) supervision of compliance with the policy of public information and/or demonstrations of breath alcohol testing instruments and equipment;

(7) all technical, administrative and regulatory aspects of breath alcohol testing; and

(8) expert testimony by direct testimony or by affidavit concerning all aspects of breath alcohol testing.

(b) The minimum qualifications for certification as a technical supervisor are:

(1) a baccalaureate degree from an accredited college or university with a major in chemistry, or as an alternative, a major in another scientific field with sufficient semester hours in chemistry or other qualifications as determined by the scientific director (for the purposes of these regulations, sufficient hours in chemistry shall be defined as successful completion of the equivalent of a minimum of 18 semester hours of chemistry, no more than 8 of which may be freshman level.);

(2) satisfactory completion of a course of instruction as set forth in §19.4(a)(3) of this title (relating to Operator Certification);

(3) satisfactory completion of technical supervisor training approved by the scientific director, including, but not limited to:

(A) advanced survey of current information concerning alcohol and its effects on the human body;

(B) operational principles and theories applicable to the program;

(C) instrument operations, maintenance, repair and calibration;

(D) legal aspects of breath alcohol analysis;

(E) principles of instruction;

(4) knowledge and understanding of the scientific theory and principles as to the operation of the instrument and associated equipment; and

(5) prior to certification, a technical supervisor candidate must establish ~~an [proof of]~~ association or pending association with an agency ~~or [of]~~ laboratory actively engaged in evidential breath alcohol testing or with a course of instruction as set forth in §19.6 of this title (relating to Approval of Course of Instruction) upon receipt of certification. If the technical supervisor candidate or certified technical supervisor cannot establish ~~an [such proof of]~~ association, certification will, at the discretion of the scientific director, be denied or inactivated.~~.[3]~~

(c) ~~[(6)]~~ Conviction history:

(1) ~~[(A)]~~ persons convicted of a felony or a Class A misdemeanor shall not be eligible to be a certified technical supervisor;

(2) ~~[(B)]~~ persons convicted of a Class B misdemeanor within the last 10 years shall not be eligible to be a certified technical supervisor; and

(3) ~~[(C)]~~ persons receiving a driver license suspension or a denial to issue a driver license for refusal to submit to the taking of a specimen per the provisions of Texas Transportation Code, Chapter 724 or Chapter 522 within the last 5 years shall not be eligible to be a certified technical supervisor.

(d) ~~[(e)]~~ Certification.

(1) ~~When [Upon satisfactory proof to the scientific director by the applicant that]~~ the minimum qualifications set forth in subsection (b) of this section have been met, the scientific director will issue certification for a period of time designated by the scientific director unless inactivated or suspended.

(2) A certified technical supervisor is fully authorized to conduct evidential subject tests and is not required to maintain a separate certification as a breath test operator as set forth in §19.4 of this title (relating to Operator Certification).

(3) Technical supervisor certification may be voluntarily inactivated when it is no longer needed or inactivated at the discretion of the scientific director if the technical supervisor is no longer associated with an agency or laboratory actively engaged in evidential breath alcohol testing and/or with a course of instruction as set forth in §19.6 of this title (relating to Approval of Course of Instruction). Technical supervisor certification may also be inactivated at the discretion of the scientific director for any other cause deemed appropriate to protect the scientific integrity of the program and the admissibility of forensic breath test evidence.

(4) Technical supervisor certification may be suspended only by the scientific director for malfeasance, incompetence, falsely

or deceitfully obtaining certification, or failure to carry out the responsibilities set forth in this subchapter.

(5) A technical supervisor whose certification has been suspended may appeal such action in writing to the director's designee [assistant director of the major division responsible for crime laboratory activities, Texas Department of Public Safety], who will decide whether the action of the scientific director will be affirmed or set aside. The director's designee ~~[assistant director]~~ may reinstate certification of the technical supervisor making such appeal under such conditions deemed necessary and notify the scientific director in writing.

(e) ~~[(d)]~~ Certificate. The issuance of a certificate to the technical supervisor shall be evidence that the technical supervisor has met the requirements for certification.

(f) ~~[(e)]~~ Renewal of current certification and recertification. In order to maintain current certification, the technical supervisor is required to renew certification prior to its expiration. The scientific director shall determine the minimum requirement for renewal of technical supervisor certification and for recertification after inactivation or suspension.

§19.6. Approval of Courses of Instruction.

(a) Any agency, laboratory, institution, school or college intending to offer a course of instruction for certified operators of evidential breath alcohol testing instruments, must have the course curriculum approved by the scientific director.

(b) The operator course must utilize the most current revision of the Texas Breath Alcohol Testing Program Operator Manual as the primary instructional text and contain, as a minimum, these areas of instruction:

(1) the effects of alcohol on the human body;

(2) the operational principles of the breath alcohol testing instrument to be used, including:

(A) a functional description of the testing method; and

(B) a detailed operational description of the method with demonstrations.

(3) legal aspects of breath alcohol testing;

(4) supplemental information which is to include nomenclature appropriate to the field of breath alcohol testing;

(5) participation in a laboratory setting operating the breath testing equipment. Laboratory practice will include the analysis of reference samples, as well as the analysis of breath samples from human [actual drinking] subjects and completion of all required records and reports needed for documentation.

(c) Each course of instruction shall be coordinated by, or under the general direction or supervision of, a certified technical supervisor.

(d) All courses of instruction will be open to the scientific director or designated representative for inspection thereof.

(e) The course of instruction provider must ensure that all students attending the course are eligible for certification in accordance with §19.4(a)(4) of this title (relating to Operator Certification) prior to each course. [Upon satisfactory proof of compliance of subsections (a) - (d) of this section to the scientific director, the scientific director will approve the course of instruction and its participants will be eligible to apply for operator certification.]

~~[(f)]~~ Prior to commencing the course, it will be the responsibility of the teaching agency to make arrangements with the office of the scientific director for the administration of examinations.]

[(g) Prior to the administration of the examination by the scientific director, it shall be the responsibility of the course of instruction coordinator(s) to provide proof that all students attending the course of instruction have been authorized and approved by the technical supervisor responsible for the technical supervision of the operator upon certification. Failure to provide this authorization will delay the administration of the examination and/or certification until such time as proof of authorization can be documented.]

[(f) [(h)] Examinations for operator certification after completion of a course will be in accordance with §19.4(a)(4) of this title (relating to Operator Certification).

[(g) [(i)] Failure to maintain the provisions stated in this section will be cause for the scientific director to rescind approval of a course of instruction.

[(h) Course of instruction providers must request approval from the scientific director before making changes to an approved course curriculum.

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 October 15, 2026.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



CHAPTER 28. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

SUBCHAPTER A. DEFINITIONS AND GENERAL CODIS PROVISIONS

37 TAC §§28.1, 28.2, 28.4, 28.5, 28.7

The Texas Department of Public Safety (the department) proposes amendments to existing rules at 37 Texas Administrative Code (TAC), Chapter 28, Subchapter A, §§28.1, 28.2, 28.4, 28.5, and 28.7, concerning Definitions and General CODIS Provisions.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 37 TAC, Chapter 28, Subchapter A, implement Texas Government Code, Chapter 411, Department of Public Safety of the State of Texas. The proposed rules make changes to align the rules with the statutory framework, add a missing subchapter reference, and update the name Crime Laboratory Service to Crime Laboratory Division.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §28.1, Definitions, by adding a definition for an elimination sample.

The proposed rules amend §28.2, Voluntary Sample, by clarifying that an elimination sample may not be included in the DNA database.

The proposed rules amend §28.4, Sample Collection, by specifying that samples may be collected by properly trained individuals consistent with Government Code, §411.146.

The proposed rules amend §28.5, Sample Submitted to Director, by adding a missing subchapter reference and updating Crime Laboratory Service to Crime Laboratory Division.

The proposed rules amend §28.7, Communications, by updating Crime Laboratory Service to Crime Laboratory Division.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Alice Amilhat, Assistant Chief, Crime Laboratory Division, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules. Ms. Amilhat has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Ms. Amilhat has determined that the proposed rules will not affect a local economy, the department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

PUBLIC BENEFITS

Ms. Amilhat has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be improved collection of DNA samples.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Ms. Amilhat has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the department has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code, §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the department is not required to take any further action under Texas Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code, §2001.0221, the department provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the department has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do not create a new regulation.
6. The proposed rules do not expand, limit, or repeal an existing regulation.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Texas Government Code, §2007.043.

PUBLIC COMMENTS AND INFORMATION RELATED TO THE COST, BENEFIT, OR EFFECT OF THE PROPOSED RULES

The department is requesting public comments on the proposed rules and information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis. Any information that is submitted in response to this request must include an explanation of how and why the submitted information is specific to the proposed rules. Please do not submit copyrighted, confidential, or proprietary information. Comments on the proposed rules and responses to the request for information may be submitted to Frances Navejas, Crime Laboratory Division, Texas Department of Public Safety, 5800 Guadalupe Street, Austin, Texas 78752, or by email to Frances.Navejas@dps.texas.gov. Email submission only is preferred. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Government Code, §411.144(a), which requires the director to establish by rule procedures for a DNA laboratory or criminal justice agency, including an authorized law enforcement agency, in the collection, preservation, shipment, analysis, and use of a DNA sample for forensic DNA analysis, including rapid DNA analysis, in a manner that permits the exchange of DNA evidence between DNA laboratories and criminal justice agencies and the use of the evidence in a criminal case; §411.146(c)(1), which requires the director to adopt rules regarding the collection, preservation, shipment, and analysis of a DNA database sample, including the type of sample or specimen taken; and §411.152(a), which authorizes the director to adopt rules that are necessary to administer or enforce Chapter 411, Subchapter G, DNA Database System.

The statutory provisions affected by the proposed rules are those set forth in Texas Government Code, §§411.141, 411.142, 411.144, 411.146, and 411.152.

§28.1. Chapter Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context shall clearly indicate otherwise.

- (1) Accredited laboratory--A laboratory accredited in accordance with 37 TAC §§651.1 - 651.11.
- (2) CODIS--The FBI's Combined DNA Index System. The term includes the national DNA index system (NDIS) and the state DNA index system (SDIS) sponsored by the FBI.
- (3) CODIS user laboratory--A DNA laboratory subject to Subchapter G of this chapter.
- (4) Crime laboratory--
 - (A) An accredited laboratory;
 - (B) A CODIS user laboratory; or
 - (C) A forensic DNA laboratory.
- (5) Criminal justice or law enforcement agency or agency--A criminal justice agency described by Government Code, §411.082 or §411.141, a city police or county sheriff's department of this state, the department, another agency or subdivision of this state which is authorized to employ or commission peace officers, or the University of North Texas Health Science Center at Fort Worth.
- (6) Department (DPS)--The Texas Department of Public Safety.
- (7) Director--The director of the department.
- (8) DNA--Deoxyribonucleic acid.
- (9) DNA database--One or more databases that contain forensic DNA records maintained by the director.
- (10) DNA laboratory--A laboratory that performs forensic DNA analysis on samples or specimens derived from a human body, physical evidence, or a crime scene. The term includes a CODIS user laboratory or a forensic DNA laboratory.
- (11) DNA record--The results of a forensic DNA analysis performed by a DNA laboratory. The term includes a DNA profile and related records which may include a code or other identifying number referenced to a separate database and, if known, the name and other personally identifying information of the individual who is the subject of the analysis.
- (12) DNA sample--A blood sample or other biological sample or specimen submitted to the director for DNA analysis or storage.
- (13) Elimination sample--A blood sample or other biological sample or specimen voluntarily provided by the victim of an offense or another individual not involved in the alleged offense whose DNA is likely to be present at the scene of the crime to isolate and identify the DNA of a potential perpetrator.
- (14) [(+3)] FBI--The Federal Bureau of Investigation.
- (15) [(+4)] Forensic analysis--Has the meaning assigned by Code of Criminal Procedure, Article 38.35.
- (16) [(+5)] Forensic DNA laboratory--A laboratory subject to Subchapter F of this chapter.

(17) [(46)] Forensic DNA testing--Forensic DNA analysis conducted for use in a criminal proceeding under Code of Criminal Procedure, Article 38.35.

(18) [(47)] Institution of higher education--Has the meaning assigned by Education Code, §61.003.

(19) [(48)] Integrity or trustworthiness--Includes:

(A) attention to confidentiality, accuracy, and documentation; and

(B) prevention of bias or misrepresentation of qualifications, evidence, conclusions, or testimony.

(20) [(49)] Penal institution--Has the meaning assigned by Penal Code, §1.07.

(21) [(20)] Profile--The DNA profile used for law enforcement identification.

(22) [(24)] Recognized accreditation--Accreditation of a laboratory or other entity by an accrediting body recognized by the Texas Forensic Science Commission under 37 TAC §651.4.

(23) [(22)] Recognized accrediting body--An entity that:

(A) issues an accreditation accepted throughout the relevant scientific community; and

(B) accredits a laboratory or other entity, including its personnel, procedures, and facilities, whether the body uses 'accreditation,' 'certification,' or a similar term. The term accreditation does not include the certification of an individual unless that certification is relevant to an accreditation review of personnel employed by a laboratory or entity.

(24) [(23)] Substantial deficiency--A failure to comply with an accreditation or operational standard that is reasonably likely to impair:

(A) the integrity or trustworthiness of a test result; and

(B) the admissibility of that result. The term does not include a minor deficiency.

(25) [(24)] TDCJ--The Texas Department of Criminal Justice.

(26) [(25)] TJJD--The Texas Juvenile Justice Department.

§28.2. *Voluntary Sample.*

(a) Any person may voluntarily submit a sample using a DPS approved kit to the director for the purpose of creating a DNA record under Subchapter B of this chapter.

(b) Notwithstanding Government Code, Section 411.142(g), a DNA record created from an elimination sample and all information derived from that record may not be uploaded to, stored in, or capable of being searched for in the DNA database.

§28.4. *Sample Collection.*

A criminal justice or law enforcement agency or DNA laboratory may not collect, and the director may not accept, a sample taken from an individual [a person] who is not deceased, whether submitted voluntarily or as required by this chapter, unless:

(1) a blood sample is collected in a medically approved manner by:

(A) a physician, registered nurse, licensed vocational nurse, licensed clinical laboratory technologist; or

(B) an individual [another person] who is trained to properly collect blood samples under this chapter [and supervised by a licensed physician]; or

(2) a sample other than blood is collected by an individual who is trained to properly collect a sample in a manner approved by the director in a policy adopted under this chapter.

§28.5. *Sample Submitted to Director.*

A person who collects a sample under Subchapter C, D, E, or H of this chapter shall send the sample to the director at the DPS Crime Laboratory Division [Service].

§28.7. *Communications.*

(a) Information about this chapter is available at the following website: <http://www.dps.texas.gov>.

(b) Except as provided by §28.109 of this title (relating to CODIS Communications) and §28.130 of this title (relating to DNA Communications), a forensic DNA laboratory or accredited laboratory shall communicate with the department or the director through the DPS Crime Laboratory Division [Service] at:

(1) telephone number: (512) 424-2105;

(2) fax number: (512) 424-5645;

(3) e-mail address: LABQA@dps.texas.gov; and

(4) physical mailing address: DPS Crime Laboratory, 5800 Guadalupe, Austin, Texas 78752.

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 October 15, 2026.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



SUBCHAPTER B. CODIS RESPONSIBILITIES OF THE DIRECTOR

37 TAC §§28.21, 28.26, 28.27, 28.30

The Texas Department of Public Safety (the department) proposes amendments to existing rules at 37 Texas Administrative Code (TAC), Chapter 28, Subchapter B, §§28.21, 28.26, 28.27, and 28.30, concerning CODIS Responsibilities of the Director.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 37 TAC, Chapter 28, Subchapter B, implement Texas Government Code, Chapter 411, Department of Public Safety of the State of Texas. The proposed rules make changes to align the rules with the statutory framework, update revised FBI quality assurance documents, and update the name Crime Laboratory Service to Crime Laboratory Division.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §28.21, DNA Database Authority, by updating Crime Laboratory Service to Crime Laboratory

Division and updating for consistency with Government Code, §411.142(a).

The proposed rules amend §28.26, DNA Database, by updating with revised FBI quality assurance documents.

The proposed rules amend §28.27, Sample Collection Kits, by updating to align with current arrestee felony collection requirements.

The proposed rules amend §28.30, Administrative Removal, by updating for consistency with Government Code, §411.1471(e).

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Alice Amilhat, Assistant Chief, Crime Laboratory Division, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules. Ms. Amilhat has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Ms. Amilhat has determined that the proposed rules will not affect a local economy, the department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

PUBLIC BENEFITS

Ms. Amilhat has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be consistency with the statutory framework.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Ms. Amilhat has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the department has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code, §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the department is not required to take any further action under Texas Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code, §2001.0221, the department provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years

the proposed rules will be in effect, the department has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do not create a new regulation.
6. The proposed rules do not expand, limit, or repeal an existing regulation.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Texas Government Code, §2007.043.

PUBLIC COMMENTS AND INFORMATION RELATED TO THE COST, BENEFIT, OR EFFECT OF THE PROPOSED RULES

The department is requesting public comments on the proposed rules and information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis. Any information that is submitted in response to this request must include an explanation of how and why the submitted information is specific to the proposed rules. Please do not submit copyrighted, confidential, or proprietary information. Comments on the proposed rules and responses to the request for information may be submitted to Frances Navejas, Crime Laboratory Division, Texas Department of Public Safety, 5800 Guadalupe Street, Austin, Texas 78752, or by email to Frances.Navejas@dps.texas.gov. Email submission only is preferred. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Government Code, §411.144(a), which requires the director to establish by rule procedures for a DNA laboratory or criminal justice agency, including an authorized law enforcement agency, in the collection, preservation, shipment, analysis, and use of a DNA sample for forensic DNA analysis, including rapid DNA analysis, in a manner that permits the exchange of DNA evidence between DNA laboratories and criminal justice agencies and the use of the evidence in a criminal case; §411.146(c)(1), which requires the director to adopt rules regarding the collection, preservation, shipment, and analysis of a DNA database sample, including the type of sample or specimen taken; and §411.152(a), which authorizes the director to adopt rules that are necessary to ad-

minister or enforce Chapter 411, Subchapter G, DNA Database System.

The statutory provisions affected by the proposed rules are those set forth in Texas Government Code, §§411.142, 411.144, 411.146, 411.147, 411.1471 and 411.152.

§28.21. DNA Database Authority.

The director shall record DNA data and establish and maintain a computerized database that serves as the central depository in the state for [eriminal] DNA records, including profiles. The director may maintain the DNA database at the DPS Crime Laboratory Division [Service] or another suitable location.

§28.26. DNA Database.

(a) Capabilities. The DNA database must be capable of classifying, matching, and storing the profiles or other results of analyses of DNA.

(b) National standards. Standards for DNA analysis shall meet or exceed the current standards for quality assurance [and proficiency testing] for forensic DNA and DNA databasing laboratories analysis issued by the FBI. The DNA database may contain only DNA records of DNA analyses, including profiles, performed according to the standards required by this chapter.

(c) Compatibility. The DNA database must be compatible with the national DNA index system (NDIS) procedures sponsored by the FBI to the extent required by the FBI to permit the useful exchange and storage of DNA records or information derived from those records, including profiles.

(d) FBI liaison. The director or a designee is the liaison for DNA data, records, profiles, evidence, and other related matters between the FBI and a DNA laboratory or a criminal justice or law enforcement agency.

§28.27. Sample Collection Kits.

The director shall provide a reasonable quantity of sample collection kits to a criminal justice or law enforcement agency in this state, which is required by statute to collect offender and arrestee samples, at no cost to the agency. A sample collection kit shall consist of any items necessary for sample collection including instructions and any other item designated by the director. Agencies shall use the supplies contained in the kit, as directed in the instructions, unless otherwise approved by the director.

§28.30. Administrative Removal.

(a) If a sample has been erroneously taken from an individual that is not required by statute to provide a sample, the agency collecting the sample shall provide a formal request to the director asking that the sample be destroyed. ~~[Prior to destruction, a check of the offender's criminal history will be conducted to verify that there are no qualifying offenses. If an individual is determined to have a qualifying offense, and a satisfactory sample has not been previously submitted, the agency will be notified that the sample is being retained. If there are no qualifying offenses, the sample and its associated records will be removed, and the collecting agency notified of the removal. Communications may be made as detailed in §28.109 of this title (relating to CODIS Communications).]~~

(b) As soon as practicable after the acquittal of a defendant whose offense and arrest date are after September 1, 2023, described by §28.123(1) of this title (relating to Eligible Individual) or dismissal of the case against the defendant or after a defendant has been granted relief in accordance with a writ of habeas corpus that is based on a court finding or determination that the defendant is actually innocent

of a crime for which the defendant was sentenced, the court shall provide notice of the acquittal, dismissal, or grant of relief to the law enforcement agency that took the specimen and the department and shall request that the director expunge the defendant's DNA record from the DNA database under Government Code, §411.151. On receipt of the notice and after the check required by subsection (c) below, the law enforcement agency shall immediately destroy the record of the specimen collection, and the department shall destroy the specimen and the record of its receipt. Under Government Code, §411.1471, the court shall promptly notify the defendant and the defendant's attorney after the notices required by this subsection have been provided.

(c) Prior to destruction, a check of the offender's criminal history will be conducted to verify that there are no qualifying offenses. If an individual is determined to have a qualifying offense, and a satisfactory sample has not been previously submitted, the agency will be notified that the sample is being retained. If there are no qualifying offenses, the sample and its associated records will be removed, and the collecting agency notified of the removal. Communications may be made as detailed in §28.109 of this title (relating to CODIS Communications).

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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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



SUBCHAPTER E. CODIS RESPONSIBILITIES OF COMMUNITY SUPERVISION AGENCY

37 TAC §28.81

The Texas Department of Public Safety (the department) proposes amendments to an existing rule at 37 Texas Administrative Code (TAC), Chapter 28, Subchapter E, §28.81, concerning Sample Collection by Community Supervision Agency.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 37 TAC, Chapter 28, Subchapter E, implement Texas Government Code, Chapter 411, Department of Public Safety of the State of Texas. The proposed rule corrects an outdated statutory reference.

SECTION-BY-SECTION SUMMARY

The proposed rule amends §28.81, Sample Collection by Community Supervision Agency, by correcting an outdated statutory reference.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Alice Amilhat, Assistant Chief, Crime Laboratory Division, has determined that for each year of the first five years the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule. Ms. Amilhat has determined that for each year of the first five years the proposed rule is in

effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Ms. Amilhat has determined that the proposed rule will not affect a local economy, the department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

PUBLIC BENEFITS

Ms. Amilhat has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit will be an accurate statutory reference.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Ms. Amilhat has determined that for each year of the first five-year period the proposed rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. Because the department has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code, §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rule does not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the department is not required to take any further action under Texas Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code, §2001.0221, the department provides the following Government Growth Impact Statement for the proposed rule. For each year of the first five years the proposed rule will be in effect, the department has determined the following:

1. The proposed rule does not create or eliminate a government program.
2. Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rule does not require an increase or decrease in fees paid to the agency.
5. The proposed rule does not create a new regulation.
6. The proposed rule does not expand, limit, or repeal an existing regulation.

7. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed rule does not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The department has determined that no private real property interests are affected by the proposed rule and the proposed rule does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rule does not constitute a taking or require a takings impact assessment under Texas Government Code, §2007.043.

PUBLIC COMMENTS AND INFORMATION RELATED TO THE COST, BENEFIT, OR EFFECT OF THE PROPOSED RULES

The department is requesting public comments on the proposed rule and information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis. Any information that is submitted in response to this request must include an explanation of how and why the submitted information is specific to the proposed rule. Please do not submit copyrighted, confidential, or proprietary information. Comments on the proposed rule and responses to the request for information may be submitted to Frances Navejas, Crime Laboratory Division, Texas Department of Public Safety, 5800 Guadalupe Street, Austin, Texas 78752, or by email to Frances.Navejas@dps.texas.gov. Email submission only is preferred. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The proposed rule is proposed under Texas Government Code, §411.144, which requires the director to establish by rule procedures for a DNA laboratory or criminal justice agency, including an authorized law enforcement agency, in the collection, preservation, shipment, analysis, and use of a DNA sample for forensic DNA analysis, including rapid DNA analysis, in a manner that permits the exchange of DNA evidence between DNA laboratories and criminal justice agencies and the use of the evidence in a criminal case; §411.146(c)(1), which requires the director to adopt rules regarding the collection, preservation, shipment, and analysis of a DNA database sample, including the type of sample or specimen taken; and §411.152(a), which authorizes the director to adopt rules that are necessary to administer or enforce Chapter 411, Subchapter G, DNA Database System.

The statutory provisions affected by the proposed rule are those set forth in Texas Government Code, §§411.144, 411.146, and 411.152; and Texas Code of Criminal Procedure Art. 42A.352.

§28.81. Sample Collection by Community Supervision Agency.

The following individuals shall provide one or more DNA samples taken by or at the request of a community supervision and corrections department or a local juvenile probation department ("supervising agency") for the purpose of creating a DNA record:

- (1) an individual, other than a juvenile, who is ordered by a magistrate or court to provide a DNA sample under Code of Criminal Procedure, Article 42A.352 [42.12] or other law as part of an order granting community supervision to the individual; and
- (2) a juvenile who, following an adjudication for conduct constituting a felony, is placed on probation, if the conduct constitutes a felony described by Family Code, §54.0409.

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 October 15, 2026.

TRD-202604381

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: November 29, 2026

For further information, please call: (512) 424-5848



SUBCHAPTER H. DATABASE RECORDS

37 TAC §§28.121, 28.123 - 28.127, 28.129, 28.130

The Texas Department of Public Safety (the department) proposes amendments to existing rules at 37 Texas Administrative Code (TAC), Chapter 28, Subchapter H, §§28.121, 28.123 - 28.127, 28.129, and 28.130, concerning Database Records.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 37 TAC, Chapter 28, Subchapter H, implement Texas Government Code, Chapter 411, Department of Public Safety of the State of Texas. The proposed rules make changes to align the rules with the statutory framework, update the name of the CODIS DNA Procedural Guidelines and the DNA Databcard, update website references, and update the name Crime Laboratory Service to Crime Laboratory Division.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §28.121, Subchapter Definitions, by updating crime laboratory service to Crime Laboratory Division, updating databcard terminology, and updating the name of the CODIS DNA Procedural Guidelines and access on the department's website.

The proposed rules amend §28.123, Eligible Individual, by updating for consistency with Government Code, §411.1471.

The proposed rules amend §28.124, Approval of Outside Laboratory, by updating the name of the CODIS DNA Procedural Guidelines.

The proposed rules amend §28.125, Collection of Sample, by updating the name of the CODIS DNA Procedural Guidelines and updating for consistency with Government Code, §411.1471.

The proposed rules amend §28.126, Processing of Sample, by updating the name of the CODIS DNA Procedural Guidelines, updating databcard terminology, and updating Crime Laboratory Service to Crime Laboratory Division.

The proposed rules amend §28.127, DNA Record, by updating the name of the CODIS DNA Procedural Guidelines, making changes to reflect the new databcard in use, and changing the terminology from certification to affirmation.

The proposed rules amend §28.129, Notification and Information, updating Crime Laboratory Service to Crime Laboratory Division.

The proposed rules amend §28.130, DNA Communications, by updating the website and Crime Laboratory Service to Crime Laboratory Division.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Alice Amilhat, Assistant Chief, Crime Laboratory Division, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules. Ms. Amilhat has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Ms. Amilhat has determined that the proposed rules will not affect a local economy, the department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

PUBLIC BENEFITS

Ms. Amilhat has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be enhanced public safety through updated collection guidelines.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Ms. Amilhat has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the department has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code, §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the department is not required to take any further action under Texas Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code, §2001.0221, the department provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the department has determined the following:

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do not create a new regulation.
6. The proposed rules do not expand, limit, or repeal an existing regulation.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Texas Government Code, §2007.043.

PUBLIC COMMENTS AND INFORMATION RELATED TO THE COST, BENEFIT, OR EFFECT OF THE PROPOSED RULES

The department is requesting public comments on the proposed rules and information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis. Any information that is submitted in response to this request must include an explanation of how and why the submitted information is specific to the proposed rules. Please do not submit copyrighted, confidential, or proprietary information. Comments on the proposed rules and responses to the request for information may be submitted to Frances Navejas, Crime Laboratory Division, Texas Department of Public Safety, 5800 Guadalupe Street, Austin, Texas 78752; or by email to Frances.Navejas@dps.texas.gov. Email submission only is preferred. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Government Code, §411.144(a), which requires the director to establish by rule procedures for a DNA laboratory or criminal justice agency, including an authorized law enforcement agency, in the collection, preservation, shipment, analysis, and use of a DNA sample for forensic DNA analysis, including rapid DNA analysis, in a manner that permits the exchange of DNA evidence between DNA laboratories and criminal justice agencies and the use of the evidence in a criminal case; §411.146(c)(1), which requires the director to adopt rules regarding the collection, preservation, shipment, and analysis of a DNA database sample, including the type of sample or specimen taken; §411.147(a), which requires the director to establish procedures by rule to prevent unauthorized access to the DNA database and to release from the DNA database a DNA sample, analysis, record, or other information maintained; §411.147(b), which authorizes the director to adopt rules relating to the internal disclosure, access,

or use of a sample or DNA record; §411.1471(d), which requires the director to require by rule law enforcement agencies taking a specimen to preserve the specimen and maintain a record of the collection; and §411.152(a), which authorizes the director to adopt rules that are necessary to administer or enforce Chapter 411, Subchapter G, DNA Database System.

The statutory provisions affected by the proposed rules are those set forth in Texas Government Code, §§411.142, 411.144, 411.146, 411.147, 411.1471 and 411.152.

§28.121. Subchapter Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Approved laboratory or lab--A public or private forensic laboratory that is approved by the director under this subchapter. The term does not include the department's Crime Laboratory Division [erime laboratory service].

(2) Defendant--A suspect or arrestee.

(3) DNA Datacard [Database Card]--A form available from the director to be used by an agency to make a record under this subchapter.

(4) CODIS DNA Procedural Guidelines--The latest draft of the director's publication by that name and any cross-referenced material, including a procedure or specimen collection method approved by the director. This document is part of the Laboratory Customer Handbook available on the department's website.

(5) Standard DNA sample--A DNA sample provided by an individual under Subchapters A through E of this chapter.

§28.123. Eligible Individual.

(a) This subchapter applies to an eligible individual described in this section, including an individual who is:

[(1) indicted or waives indictment for a felony prohibited or punishable under Penal Code:]

[(A) §20.04(a)(4) (aggravated kidnapping with intent to cause bodily injury or violate or abuse sexually);]

[(B) §21.11 (indecentcy with child);]

[(C) §22.011 (sexual assault);]

[(D) §22.021 (aggravated sexual assault);]

[(E) §25.02 (prohibited sexual conduct or 'incest');]

[(F) §30.02(d) (burglary of a habitation committing, attempting, or with intent to commit a non-theft felony);]

[(G) §43.05 (compelling prostitution);]

[(H) §43.25 (sexual performance by child);]

[(I) §43.26 (possession or promotion of child pornography);]

[(J) §21.02 (continuous sexual abuse of young child or children); or]

[(K) §20A.03 (continuous trafficking of persons);]

(1) [(2)] arrested for any offense punishable as a felony; [described by paragraph (1) of this section after having been previously convicted of or placed on deferred adjudication for a felony:]

[(A) described by paragraph (1) of this section; or]

~~[(B) punishable under Penal Code, §30.02(c)(2) (burglary of a habitation);]~~

~~[(3) convicted of a misdemeanor or any higher category of offense under a Penal Code;]~~

~~[(A) described by paragraph (1) of this section, except for an offense punishable as a Class A misdemeanor under Penal Code;]~~

~~[(i) §20.02 (unlawful restraint);]~~

~~[(ii) §22.01 (assault); or]~~

~~[(iii) §22.05 (deadly conduct);]~~

~~[(B) §21.08 (indecent exposure);]~~

~~[(C) §25.04 (enticing a child);]~~

~~[(D) §43.02(b) (prostitution-based on the payment of a fee by the actor or another person on behalf of the actor);]~~

~~[(E) §43.03 (promotion of prostitution); or]~~

~~[(F) §43.24 (sale, distribution, or display of harmful material to minor);]~~

(2) convicted of an offense:

(A) under Title 5, Penal Code, that is punishable as a Class A misdemeanor, except for an offense punishable as a Class A misdemeanor under Penal Code, §22.05; or

(B) punishable as a Class A or B misdemeanor, as applicable, under Penal Code, §§21.08, 25.04, or 43.24;

(3) [(4)] released on bail or bond under Code of Criminal Procedure, Article 17.47;

(4) [(5)] required to register under Chapter 62, Code of Criminal Procedure, who is not otherwise required to provide a standard sample under Code of Criminal Procedure, Article 65.059; or

(5) [(6)] described by paragraph (1) or (3) of this section and who voluntarily providing [provides] a sample to create a DNA record under this subchapter.

(b) An eligible individual does not include a victim of an offense or another individual not involved in the alleged offense whose DNA is likely to be present at the scene of the crime.

§28.124. *Approval of Outside Laboratory.*

(a) Date of approval. A laboratory outside the department must:

(1) be approved on the date a DNA sample is analyzed by the lab; and

(2) remain approved at least until the date the analysis report is submitted by the lab to the director.

(b) Manner. An agency or other entity seeking approval for a lab under this section must submit to the director a written justification for the approval as described in the CODIS DNA Procedural Guidelines. The laboratory must be accredited in accordance with 37 TAC §§651.1 - 651.11.

§28.125. *Collection of Sample.*

(a) Generally. An agency may collect a DNA sample from an eligible individual. The agency collecting the sample shall use a collection method approved by the director and described in the CODIS DNA Procedural Guidelines and may:

(1) only use a sample collection kit obtained from the director; and

(2) not collect the sample using a trusty, probationer, volunteer, or other individual who is not officially associated with the agency.

(b) Evidentiary sample discouraged. The director does not intend for a DNA sample to be used in court as the evidentiary sample establishing identity. An agency should use information about matching the database sample's profile to an unknown profile to obtain a separate evidentiary sample.

(c) Collection kit. For the purpose of collecting a DNA sample under this subchapter the director shall make reasonable efforts to provide an adequate supply of sample kits to each sheriff's department operating a county jail and, upon request, to any other agency with appropriately trained personnel.

(d) Training. The director may provide or approve training under this subchapter as described in the CODIS DNA Procedural Guidelines. If an agency frequently submits unusable samples, the director may require additional training before accepting further samples.

(e) Statutory prohibition. Under Government Code, §411.1471(d), no agency may take a blood sample for the purpose of creating a DNA record under this subchapter.

(f) Court-ordered sample. If a court, including a magistrate, orders the taking of a DNA sample under this subchapter, the director encourages but does not require the court to order that the sample be taken by an agency that has the personnel, training, and other resources necessary to efficiently and properly take the sample. The director expects these personnel will normally be:

(1) a booking clerk or another individual performing a similar function at a county jail; or

(2) a member of a sex offender registration unit or another individual performing a similar function for the agency.

(g) Criminal history check. If an agency arrests an individual for a felony offense potentially covered by this subchapter, the director encourages but does not require the agency to take reasonable steps to determine if the individual has the criminal history sufficient to take a DNA sample under this subchapter. These steps should include inquiry into each appropriate information system available to law enforcement.

(h) Duty--standard sample. The duty to require or take a standard sample:

(1) is affected by the fact that an individual proves that a DNA sample has already been collected under this subchapter; and

(2) is not affected by the fact that:

(A) an individual asserts or proves that a standard specimen has already been collected; or

(B) a standard profile appears to already exist for the individual.

(i) A law enforcement agency booking a defendant described by Government Code, §411.1471(a)(1), immediately after fingerprinting the defendant and at the same location as the fingerprinting occurs, shall require the defendant to provide one or more specimens for the purpose of creating a DNA record.

(j) After a defendant described by Government Code, §411.1471(a)(2) is convicted, the court shall require the defendant to provide to a law enforcement agency one or more specimens for the purpose of creating a DNA record.

§28.126. *Processing of Sample.*

(a) Preservation. The agency collecting the DNA sample shall use a preservation method and procedure approved by the director and described in the CODIS DNA Procedural Guidelines.

(b) Forwarding. The collecting agency shall forward the sample together with the original DNA Databcard [Database Card] to the director or an approved lab no later than the end of the third business day after the collection.

(c) After forwarding. If the collecting agency forwards the sample kit and its associated databcard [database eard] to an approved lab, the agency:

(1) may request the lab to return a copy of the profile to the agency; and

(2) must instruct the lab that the lab shall, as soon as is reasonably practicable after creating the profile, forward to the director:

(A) the profile;

(B) all remaining sample material, including the unprocessed buccal swab and any remaining extracted DNA, and

(C) all other original kit components, including the original databcard [database eard].

(d) Acceptance or rejection. The director:

(1) may accept a usable sample that substantially complies with this subchapter;

(2) may reject an unusable sample that does not comply with this subchapter;

(3) shall notify the submitting agency of any rejection; and

(4) may destroy the rejected sample, if it is unusable.

(e) Testing fee--DPS lab. The director shall absorb the cost of testing necessary to create a profile for a DNA sample submitted directly to the DPS Crime Laboratory Division [Service] by the collecting agency.

(f) Testing fee--approved lab. The collecting agency shall initially pay the cost of testing necessary to create a profile for a DNA sample submitted to an outside lab approved under this subchapter. The agency may then seek reimbursement from the criminal justice division of the governor's office under Code of Criminal Procedure, Article 102.056(e).

(g) Profile entry. The director shall enter the record's profile into the database.

§28.127. DNA Record.

(a) Maintenance by agency. An agency collecting a DNA sample from an eligible individual shall maintain a record of the collection under this section, including a copy of the DNA Databcard [Database Card] and any associated record.

(b) Affirmation [Certification]. The individual agency representative who collects the sample affirms [shall certify] compliance with the CODIS DNA Procedural Guidelines by adding the individual's name on the DNA Databcard at the time of collection. The individual's name on the DNA Databcard (LAB-CO-57) affirms that: [The individual shall make the certification on a DNA Database Card completed at the time of collection. The card (LAB-13) includes a certification that:]

(1) the individual is properly trained; and

(2) the DNA sample was taken in compliance with this subchapter.

(c) Retention period. Unless a court orders differently, the collecting agency shall retain the copy of the DNA Databcard [Database Card] and any associated record for a period of three years from the date of collection.

(d) Maintenance by DPS. The director shall maintain a DNA sample and record under this subchapter using standard CODIS laboratory procedures.

§28.129. Notification and Information.

If this subchapter requires or permits an agency to communicate with the department or the director, the agency must communicate with the department or the director through the DPS Crime Laboratory Division [Service].

§28.130. DNA Communications.

(a) Information about this subchapter is available at the following website: <http://www.dps.texas.gov/http://www.dps.texas.gov/CrimeLaboratory/CODIS/index.htm>.

(b) To inquire about information and administrative matters with, transmit to, or otherwise contact the department, director, or Crime Laboratory Division [Service] with respect to this subchapter:

(1) the telephone number is: (512) 424-2790;

(2) the fax number is: (512) 424-2386;

(3) the email address is: codislab@dps.texas.gov;

(4) the Post Office Box mailing address is: Crime Laboratory Division [Service], Attention CODIS, MSC 0461, Texas Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-0461; and

(5) the physical mailing address is: Crime Laboratory Division [Service], Attention CODIS, Texas Department of Public Safety, 5800 Guadalupe, Austin, Texas 78752.

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 October 15, 2026.

TRD-202604382

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: November 29, 2026

For further information, please call: (512) 424-5848



SUBCHAPTER I. CODIS RESPONSIBILITIES OF PRIMARY REGISTRATION AUTHORITY

37 TAC §§28.141 - 28.144

The Texas Department of Public Safety (the department) proposes new rules at 37 Texas Administrative Code (TAC), Chapter 28, Subchapter I, §§28.141 - 28.144, concerning CODIS Responsibilities of Primary Registration Authority.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 37 TAC, Chapter 28, Subchapter I, implement Texas Government Code, Chapter 411, Department of Public Safety of the State of Texas; Texas Code of Criminal

Procedure, Chapter 62, Sex Offender Registration Program; and Texas Code of Criminal Procedure, Chapter 65, Terrorist Offender Registration Program. The proposed rules outline the Combined DNA Index System (CODIS) responsibilities of a law enforcement agency designated as a primary registration authority for a person who must register as a sex offender or terrorist offender under Code of Criminal Procedure, Chapter 62 or Chapter 65. The proposed rules are necessary to implement Senate Bill 1518, 88th Legislature, Regular Session (2023).

SECTION-BY-SECTION SUMMARY

The proposed rules add new §28.141, Sample Collection by Primary Registration Authority, which outlines the requirement to provide a DNA sample to a primary registration authority if a person is required to register as a sex offender or terrorist offender.

The proposed rules add new §28.142, Primary Registration Authority's Responsibilities, which outlines the primary registration authority's responsibilities.

The proposed rules add new §28.143, Sample Collection, which outlines the sample collection requirements.

The proposed rules add new §28.144, Fingerprint, which outlines the fingerprint requirements.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Alice Amilhat, Assistant Chief, Crime Laboratory Division, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules. Ms. Amilhat has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Ms. Amilhat has determined that the proposed rules will not affect a local economy, the department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

PUBLIC BENEFITS

Ms. Amilhat has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be enhanced public safety because individuals on the terrorist offender or sex offender registry must submit a DNA sample into CODIS to generate investigative leads.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Ms. Amilhat has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the department has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory

Flexibility Analysis, as detailed under Texas Government Code, §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the department is not required to take any further action under Texas Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code, §2001.0221, the department provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the department has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do create a new regulation.
6. The proposed rules do not expand, limit, or repeal an existing regulation.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Texas Government Code, §2007.043.

PUBLIC COMMENTS AND INFORMATION RELATED TO THE COST, BENEFIT, OR EFFECT OF THE PROPOSED RULES

The department is requesting public comments on the proposed rules and information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis. Any information that is submitted in response to this request must include an explanation of how and why the submitted information is specific to the proposed rules. Please do not submit copyrighted, confidential, or proprietary information. Comments on the proposed rules and responses to the request for information may be submitted to Frances Navejas, Crime Laboratory Division, Texas Department of Public Safety, 5800 Guadalupe Street, Austin, Texas 78752, or by email to Frances.Navejas@dps.texas.gov. Email submission only is preferred. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Government Code, §411.1473(b), which requires the department to adopt rules related to the CODIS responsibilities of a primary registration authority; Texas Code of Criminal Procedure, Art. 62.010, which authorizes the department to adopt rules to implement Chapter 62; and Texas Code of Criminal Procedure, Art. 65.009, which authorizes the department to adopt rules necessary to implement Chapter 65. The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is Senate Bill 1518, 88th Legislature, Regular Session (2023).

The statutory provisions affected by the proposed rules are those set forth in Texas Government Code, §411.1473; Texas Code of Criminal Procedure, Art. 62.010 and Art. 62.061; and Texas Code of Criminal Procedure, Art. 65.009 and Art. 65.059.

§28.141. Sample Collection by Primary Registration Authority.

A person who is required to register under Code of Criminal Procedure, Chapter 62 or Chapter 65 must provide one or more DNA samples taken by or at the request of a law enforcement agency designated as a person's primary registration authority for the purpose of creating a DNA record.

§28.142. Primary Registration Authority's Responsibilities.

The law enforcement agency must:

(1) take one or more specimens from a person described by §28.141 of this title (relating to Sample Collection by Primary Registration Authority) for the purpose of creating a DNA record using a collection kit approved and supplied by the director;

(2) preserve the specimen;

(3) maintain a record of the collection of the specimen; and

(4) send the sample to the director for scientific analysis under Subchapter B of this title (relating to CODIS Responsibilities of the Director) or send to the director an analysis of the specimen performed by a laboratory chosen by the law enforcement agency and approved by the director.

§28.143. Sample Collection.

(a) Time to collect. The law enforcement agency must obtain the sample from a person at or near the time the law enforcement agency accepts registration of that person.

(b) Use of force. A law enforcement agency employee may use force against a person required to provide a sample under this subchapter when and to the degree the employee reasonably believes the force is immediately necessary to collect the sample.

(c) Contracts. The law enforcement agency may contract for collection services under this subchapter.

(d) A law enforcement agency is not required to take and a person is not required to provide a specimen under this section if the person is required to and has provided a specimen under this chapter or other law.

§28.144. Fingerprint.

(a) The law enforcement agency must collect and forward fingerprints with the DNA Datacard supplied in the director-approved collection kit with each DNA sample collected under this subchapter.

(b) The thumbs must be rolled to capture the entire print if collected with ink.

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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D. Phillip Adkins

General Counsel

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For further information, please call: (512) 424-5848



SUBCHAPTER K. COLLECTION, STORAGE, PRESERVATION, AND RETRIEVAL OF BIOLOGICAL EVIDENCE

37 TAC §§28.181 - 28.183

The Texas Department of Public Safety (the department) proposes amendments to existing rules at 37 Texas Administrative Code (TAC), Chapter 28, Subchapter K, §§28.181 - 28.183, concerning Collection, Storage, Preservation, and Retrieval of Biological Evidence.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 37 TAC, Chapter 28, Subchapter K, implement Texas Code of Criminal Procedure, Chapter 38, Evidence in Criminal Actions. The proposed rules update the collection and preservation best practices for biological evidence; additional changes include updating the Crime Laboratory Division name, specifying the Laboratory Customer Handbook, and updating a statutory reference.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §28.181, Applicability and Standards, by specifying the name of the Laboratory Customer Handbook and updating Crime Laboratory Service to Crime Laboratory Division.

The proposed rules amend §28.182, Collection and Preservation, by updating the collection and preservation best practices for biological evidence.

The proposed rules amend §28.183, Retrieval and Retention, by updating the statutory reference.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Alice Amilhat, Assistant Chief, Crime Laboratory Division, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules. Ms. Amilhat has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Ms. Amilhat has determined that the proposed rules will not affect a local economy, the department is not required

to prepare a local employment impact statement under Texas Government Code, §2001.022.

PUBLIC BENEFITS

Ms. Amilhat has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be enhanced preservation of biological evidence.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Ms. Amilhat has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the department has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code, §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the department is not required to take any further action under Texas Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code, §2001.0221, the department provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the department has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do not create a new regulation.
6. The proposed rules do not expand, limit, or repeal an existing regulation.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Texas Government Code, §2007.043.

PUBLIC COMMENTS AND INFORMATION RELATED TO THE COST, BENEFIT, OR EFFECT OF THE PROPOSED RULES

The department is requesting public comments on the proposed rules and information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis. Any information that is submitted in response to this request must include an explanation of how and why the submitted information is specific to the proposed rules. Please do not submit copyrighted, confidential, or proprietary information. Comments on the proposed rules and responses to the request for information may be submitted to Frances Navejas, Crime Laboratory Division, Texas Department of Public Safety, 5800 Guadalupe Street, Austin, Texas 78752, or by email to Frances.Navejas@dps.texas.gov. Email submission only is preferred. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Code of Criminal Procedure, Art. 38.43(g), which requires the department to adopt rules and standards that specify the manner of collection, storage, preservation, and retrieval of biological evidence.

The statutory provisions affected by the proposed rules are those set forth in Texas Code of Criminal Procedure, Art. 38.43.

§28.181. Applicability and Standards.

This subchapter applies to the collection, storage, preservation and retrieval of biological evidence as defined and specified in Code of Criminal Procedure, Article 38.43. Pursuant to this article, the department has adopted standards, consistent with best practices, which are published in the Laboratory Customer Handbook located at the Crime Laboratory Division's [Service's] homepage on the department's website at www.dps.texas.gov.

§28.182. Collection and Preservation.

(a) Biological evidence and materials should be collected, handled, and preserved in a manner that prevents contamination, [and] slows degradation, and ensures integrity during all phases of the investigation, pretrial, and post adjudication, including:

(1) Using personal protective equipment such as gloves during collection and handling of biological evidence to prevent contamination;

(2) Ensuring each item of biological evidence is thoroughly dried prior to packaging to slow degradation;

(3) [(1)] Packaging each item of biological evidence separately in breathable containers to slow degradation and prevent contamination;

(4) [(2)] Labeling, marking for identification, and sealing each package of evidence to preserve its chain-of-custody and to prevent cross contamination, loss, or deleterious change; and

(5) [(3)] Storing the evidence in climate-controlled [climate controlled] conditions in a facility, which provides security and limited access.

(b) During the trial phase, due diligence shall be exercised to protect biological evidence from cross contamination, loss, and deleterious change. If a courthouse has climate-controlled [~~climate controlled~~] facilities, those facilities should be used. Personal protective equipment such as gloves should be used when handling the evidence in court.

§28.183. Retrieval and Retention.

(a) The retention and preservation schedule for biological evidence may be accessed in Code of Criminal Procedure, Article 38.43(c) and (c-1).

(b) Long-term evidence retention should be part of the governmental evidence-retention entity's evidence control policy.

(c) A governmental evidence-retention entity must have a system to catalog evidence so it is possible to locate any retained biological evidence.

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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D. Phillip Adkins

General Counsel

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SUBCHAPTER M. MISCELLANEOUS

37 TAC §28.201

The Texas Department of Public Safety (the department) proposes amendments to an existing rule at 37 Texas Administrative Code (TAC), Chapter 28, Subchapter M, §28.201, concerning Sexual Assault Evidence in Cases Without Law Enforcement Reporting.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 37 TAC, Chapter 28, Subchapter M, implement Texas Code of Criminal Procedure, Chapter 56A, Rights of Crime Victims. The proposed rule corrects an outdated statutory reference, removes outdated language related to allowable reimbursements that is no longer applicable to the department, and updates Crime Laboratory Service to Crime Laboratory Division.

SECTION-BY-SECTION SUMMARY

The proposed rule amends §28.201, concerning Sexual Assault Evidence in Cases Without Law Enforcement Reporting, by correcting an outdated statutory reference, removing outdated language related to allowable reimbursements that is no longer applicable to the department, and updating Crime Laboratory Service to Crime Laboratory Division.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Alice Amilhat, Assistant Chief, Crime Laboratory Division, has determined that for each year of the first five years the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing

or administering the proposed rule. Ms. Amilhat has determined that for each year of the first five years the proposed rule is in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Ms. Amilhat has determined that the proposed rule will not affect a local economy, the department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

PUBLIC BENEFITS

Ms. Amilhat has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit will be accurate information published regarding sexual assault evidence in cases without law enforcement reporting.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Ms. Amilhat has determined that for each year of the first five-year period the proposed rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. Because the department has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code, §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rule does not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the department is not required to take any further action under Texas Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code, §2001.0221, the department provides the following Government Growth Impact Statement for the proposed rule. For each year of the first five years the proposed rule will be in effect, the department has determined the following:

1. The proposed rule does not create or eliminate a government program.
2. Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rule does not require an increase or decrease in fees paid to the agency.
5. The proposed rule does not create a new regulation.

6. The proposed rule does not expand, limit, or repeal an existing regulation.

7. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed rule does not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The department has determined that no private real property interests are affected by the proposed rule and the proposed rule does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rule does not constitute a taking or require a takings impact assessment under Texas Government Code, §2007.043.

PUBLIC COMMENTS AND INFORMATION RELATED TO THE COST, BENEFIT, OR EFFECT OF THE PROPOSED RULES

The department is requesting public comments on the proposed rule and information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis. Any information that is submitted in response to this request must include an explanation of how and why the submitted information is specific to the proposed rule. Please do not submit copyrighted, confidential, or proprietary information. Comments on the proposed rule and responses to the request for information may be submitted to Frances Navejas, Crime Laboratory Division, Texas Department of Public Safety, 5800 Guadalupe Street, Austin, Texas 78752, or by email to Frances.Navejas@dps.texas.gov. Email submission only is preferred. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The proposed rule is proposed under Texas Code of Criminal Procedure, Art. 56A.309, which requires the department to adopt rules as necessary to implement Subchapter G, Forensic Medical Examination of Sexual Assault Victim.

The statutory provisions affected by the proposed rule are those set forth in Texas Code of Criminal Procedure, Art. 56A.306 and 56A.309.

§28.201. *Sexual Assault Evidence in Cases Without Law Enforcement Reporting.*

Pursuant to Code of Criminal Procedure, Article 56A.306 [56.065], instructions and forms regarding the submission, transfer, and preservation of evidence [and allowable reimbursement] are located at the Crime Laboratory Division's [Service's] homepage on the department's website at www.dps.texas.gov.

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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D. Phillip Adkins

General Counsel

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CHAPTER 35. PRIVATE SECURITY

SUBCHAPTER M. CONTINUING EDUCATION

37 TAC §35.161

The Texas Department of Public Safety (the department) proposes amendments to an existing rule at 37 Texas Administrative Code (TAC), Chapter 35, Subchapter M, §35.161, concerning Continuing Education Requirements.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 37 TAC, Chapter 35, Subchapter M, implement Texas Occupations Code, Chapter 1702, Private Security. The proposed rule revises the existing one-hour ethics requirement to include either one hour of ethics or code compliance updates. The amendment was recommended by the Private Security Advisory Board.

SECTION-BY-SECTION SUMMARY

The proposed rule amends §35.161, Continuing Education Requirements, by revising the one-hour ethics component of the continuing education requirement for individual license holders and owners, partners, and shareholders who hold individual licenses as owners to allow for one hour of content on either ethics or code compliance updates. One grammatical correction is also made.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Amanda Contrino, Senior Policy Analyst, Regulatory Services Division, has determined that for each year of the first five years the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule. Ms. Contrino has determined that for each year of the first five years the proposed rule is in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Ms. Contrino has determined that the proposed rule will not affect a local economy, the department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

PUBLIC BENEFITS

Ms. Contrino has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit will be enhanced oversight and consistency in the administration of the Private Security Program.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Ms. Contrino has determined that for each year of the first five-year period the proposed rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. Because the department has determined that the proposed rule will have no adverse economic effect on

small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code, §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the department is not required to take any further action under Texas Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code, §2001.0221, the department provides the following Government Growth Impact Statement for the proposed rule. For each year of the first five years the proposed rule will be in effect, the department has determined the following:

1. The proposed rule does not create or eliminate a government program.
2. Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rule does not require an increase or decrease in fees paid to the agency.
5. The proposed rule does not create a new regulation.
6. The proposed rule expands, limits, or repeals an existing regulation.
7. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed rule does not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The department has determined that no private real property interests are affected by the proposed rule and the proposed rule does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rule does not constitute a taking or require a takings impact assessment under Texas Government Code, §2007.043.

PUBLIC COMMENTS AND INFORMATION RELATED TO THE COST, BENEFIT, OR EFFECT OF THE PROPOSED RULES

The department is requesting public comments on the proposed rule and information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis. Any information that is submitted in response to this request must include an explanation of how and why the submitted information is specific to the proposed rule. Please do not submit copyrighted, confidential, or proprietary information. Comments on the proposed rule and responses to the request for information may be submitted to Amanda Contrino, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0240, or by email to RSD.Rule.Comments@dps.texas.gov. Email submission only is preferred. The

deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The proposed rule is proposed under Texas Occupations Code, §1702.061(a), which requires the Public Safety Commission to adopt rules and general policies to guide the department in the administration of the chapter; and §1702.308, which requires the department to recognize, prepare, or administer continuing education programs for company license holders, commissioned security officers, and individual license holders.

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, §1702.061 and §1702.308.

§35.161. Continuing Education Requirements.

(a) An application to renew an individual license may not be submitted until the required minimum hours of department approved continuing education credits have been earned in accordance with the Act and this chapter. Proof of the required continuing education must be maintained by the employer and contained in the employee's personnel file. All individual licensees shall indicate they have completed the required minimum hours of department approved continuing education credits on their application for renewal.

(b) Owners, partners, and shareholders who hold individual licenses as owners only, shall complete a total of eight (8) hours of continuing education, including seven (7) hours in the subject matter that relates to the type of regulated service provided by their company, and one (1) hour of either ethics or code compliance updates. Noncommissioned security officers, and all individuals not required to obtain a commission or license under the Act are specifically exempted from the continuing education requirements.

(c) All individual license holders not otherwise addressed in this section shall complete a total of eight (8) hours of continuing education, seven (7) hours of which must be in subject matter that relates to the type of individual license held, and one (1) hour of either [which must cover] ethics or code compliance updates.

(d) Private investigators with more than fifteen (15) years of continued licensure as a private investigator shall complete a total of twelve (12) hours of continuing education, eight (8) hours of which must relate to investigations, two (2) hours of which must cover ethics, and two (2) hours of which must involve the review of the Act and the rules of this chapter.

(e) Private investigators with less than fifteen (15) years of continued licensure as a private investigator shall complete a total of eighteen (18) hours of continuing education, fourteen (14) of which must relate to investigations, two (2) hours of which must cover ethics, and two (2) hours of which must involve the review of the Act and the rules of this chapter.

(f) Any individual licensed as a private investigator who fails to complete the required continuing education during the twenty-four (24) months of initial licensure is not eligible to make a new or renewal application until such time as the training requirement for the previous licensure period has been satisfied.

(g) Commissioned security officers and personal protection officers shall complete six (6) hours of continuing education by completing the renewal portions of the Level III or IV training course, as applicable. All continuing education for commissioned security officers and personal protection officers must be taught by department approved training schools and instructors. Commissioned security officers shall submit a firearms proficiency certificate along with the renewal application.

(h) During the first twelve (12) months of initial licensure, alarm system installers must complete the Alarm Level I training. This training consists of sixteen (16) hours of classroom instruction or equivalent online course as approved by the department, with two (2) hours covering the National Electrical Code (NEC) as it applies to low voltage. Alarm systems installers [installer] must earn eight (8) hours of continuing education credits in an alarm related field, with one (1) hour covering the National Electrical Code (NEC) as it applies to low voltage, during each subsequent twenty-four (24) month period. This requirement must be satisfied prior to the expiration date of the license and before renewal.

(i) For the protection of the installer and the general public, the work of an alarm system installer who has not completed the required sixteen (16) hours of instruction must be overseen by an installer who has completed the required sixteen (16) hours of instruction. The oversight required under this section need not involve direct physical supervision, but the overseeing installer is responsible for ensuring the installation complies with all applicable requirements and regulations.

(j) Any licensed alarm systems installer who fails to complete sixteen (16) hours of training during the twenty-four (24) months of initial licensure, or who fails to complete eight (8) hours of continuing education during any subsequent licensing period is not eligible to renew until all training requirements for the previous license period have been satisfied.

(k) Alarm monitors shall complete four (4) hours of continuing education relating to the duties and responsibilities of an alarm monitor.

(l) All individuals licensed as locksmiths must complete sixteen (16) hours of continuing education every two (2) years.

(m) Attendees of continuing education courses shall maintain certificates of completion furnished by the school director in their files for a period of two (2) years. Attendees shall furnish the department with copies of all certificates of completion upon request.

(n) Continuing education courses are only valid if completed within the two year period preceding the license's current expiration date.

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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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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